

State of Rhode Island and Providence Plantations
Rhode Island Department of Revenue
Division of Taxation

Public Notice of Proposed Rule-Making

RULE IDENTIFIER: ERLID 235

REGULATION TITLE: Bottles – and Other Returnable Containers

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public Notice Date: February 15, 2018

End of Comment Period Date: March 18, 2018

Pursuant to the provisions of R.I. Gen. Laws § 42-35-2(a)(1), and in accordance with the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, the Division of Taxation hereby gives notice of its intent to repeal a regulation regarding Bottles – and Other Returnable Containers.

The proposed regulation and concise summary of non-technical requirements and proposed new rules are available for public inspection at www.tax.ri.gov, in person at the Rhode Island Division of Taxation, or requested by e-mail at Michael.Taylor@tax.ri.gov or by calling Michael Taylor at (401) 574-8930.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) whether the regulation, in and of itself, would have significant economic impact on small businesses. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by March 18, 2018 to Michael Taylor, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8930 or via e-mail at Michael.Taylor@tax.ri.gov.

This rule is not expected to be controversial and shall be submitted as a direct final rule pursuant to R.I. Gen. Laws § 42-35-2.11. The proposed rule takes effect thirty (30) days after publication if no objection is received. If no objection is received, the rule becomes final. If an objection to the rule is received from any person not later than thirty (30) days after publication of the notice of the proposed rule, the proposed rule does not become final.

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Concise summary of all non-technical requirements pursuant to R.I. Gen. Laws § 42-35-2(a)(1) for rules and regulations regarding Bottles – and Other Returnable Containers.

The purpose of this regulation is repeal the regulation regarding Bottles – and Other Returnable Containers. **This regulation shall take effect March 18, 2018.**

~~State of Rhode Island – Division of Taxation~~

~~Sales and Use Tax~~

~~Regulation SU 87-14~~

~~Bottles— and Other Returnable Containers~~

~~Subsection (4)(C) of section 44-18-30 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.~~

~~The term "returnable containers" is defined by law to mean containers of a kind customarily returned by the buyer of the contents for reuse.~~

~~Accordingly, where, for 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.~~

~~It is to be noted that said subsection (4)(C) provides that the exemption shall apply to returnable containers when they are sold with the contents in connection with a retail sale.~~

~~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.~~

~~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.~~

~~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 subsection (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.~~

~~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.~~

~~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.~~

~~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.~~

~~(Cross reference: Containers and Labels)~~

~~R. GARY CLARK~~

TAX ADMINISTRATOR
DATE: May 1, 1987