

**Title 12 – Department of Revenue
Division 10 – Director of Revenue
Chapter 103 – Sales/Use Tax – Imposition of Tax**

PROPOSED AMENDMENT

12 CSR 10-103.700 Packaging and Shipping Materials. The division is amending the purpose and sections (2)–(4).

PURPOSE: The purpose of the amendment is to update the statutory reference and fix grammatical errors and word usage.

PURPOSE: Section 144.01[0]8.1, 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.

(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, **such** as gifts or free samples.

(B) Purchases of items of a non-reusable nature by persons operating eating or food service establishments making retail sales are not subject to tax if the item is furnished with or in conjunction with the retail sale. Such items include, but are not limited to, wrapping and packaging items[,], [and] non-reusable paper, wood, plastic and aluminum articles including containers, trays, napkins, dishes, silverware, cups, bags, boxes, straws and toothpicks.

(4) Examples.

(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.

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

AUTHORITY: section 144.270, RSMo [1994] 2016. Original rule filed Aug. 21, 2000, effective March 30, 2001. Amended: Filed Oct. 2, 2018.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*