



Sales and Use Tax GOVERNMENT DOCUMENTS  
COLLECTION Massachusetts  
DOR Directive 96-4 Department of  
Revenue

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Sales and Use Tax Treatment of Milk Crates, Bread Racks, and Similar Items  
University of Massachusetts  
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**Facts:**

Food and beverage distributors often use reusable crates, bread racks, soft drink shells, etc. ("crates" and "racks") to store and transport packaged foods 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 shelves 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 use 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 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 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]<sup>1</sup> 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**

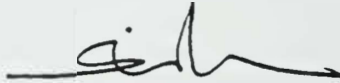
To determine the applicability of a sales and use tax exemption, a review of both the buyer's basic purpose and the inherent nature of his business often must be undertaken. *Coca Cola Bottling Company of Northampton v. Commissioner of Revenue*, 393 Mass. 726, 729 (1985). See also *Jan Co. Central, Inc. 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 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).

1. Bracketed language essential to the comprehension of § 6(q)(1) was deleted in a 1981 amendment by St. 1981, c. 571, § 1. Noting that the deletion was accidental, the Supreme Judicial Court ("SJC") in *Jan Co. Central, Inc. v. Commissioner of Revenue*, reinserted the bracketed language. *Jan Co.*, 405 Mass. 686, 691 n.3 (1989).

## 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  
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