

**Vermont Department of Taxes**  
**TECHNICAL BULLETIN**

**TAX: SALES AND USE**

**TB-11**

**SUBJECT: THE PACKAGING EXEMPTION FROM**  
**7/14/98**

**THE VERMONT SALES AND USE TAX**  
**APPLIED TO RETURNABLE AND**  
**REUSABLE ITEMS**

**ISSUED:**

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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 sales and use tax. The rationale for the exemption is that packaging<sup>1</sup> 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.

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<sup>1</sup> The term "packaging" is used generically to include all the items exempted section 9741(16).

***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 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 longer than three 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 years and the item is used to package or ship tangible personal property, it is exempt from the Vermont sales tax pursuant to section 9741(16).

Equipment used for transportation is not exempt as packaging. For example, and not by way of limitation, 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 supersedes 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 effect taxes paid or assessed prior to July 1, 1998 unless an appeal is pending on the issue of reusable packaging.

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