**103 KAR 27:220. Restaurant transactions.**

RELATES TO: KRS 91A.400, 139.010, 139.200, 139.210, 139.260, 139.270, 139.290, 139.310, 139.330, 139.480, 139.485

STATUTORY AUTHORITY: KRS 131.130, 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation establishes the sales and use tax requirements for miscellaneous transactions relating to restaurants.

Section 1. Definitions.

(1) "Food and food ingredients" is defined by KRS 139.485(2).

(2) "Mandatory gratuity" means a gratuity or tip charged by a restaurant. An example of a mandatory gratuity is a gratuity charge made by a restaurant for serving a large number of customers in a single group.

(3) "Prepared food" is defined by KRS 139.485(3)(g).

(4) "Voluntary gratuity" means a gratuity or tip not required by a restaurant, but willfully added by a customer.

Section 2.

(1) Tax shall apply to any charge added to the price of prepared food by a restaurant, including a mandatory gratuity, service charge, surcharge, or fee itemized on the invoice or ticket to the customer by the restaurant. These charges shall be considered part of the selling price of prepared food.

(2) A voluntary gratuity left by the customer shall not be subject to tax.

Section 3. A restaurant employee shall pay tax on the sales price of any prepared food or other taxable item purchased from the employer.

Section 4.

(1) Taxable tangible personal property shall be subject to sales and use tax based upon the restaurant's purchase price if the property was:

(a) Purchased exempt from tax under a Resale Certificate (Form 51A105) or a Streamlined Sales and Use Tax Agreement - Certificate of Exemption (Form 51A260); and

(b) Provided free of charge to employees or customers, or otherwise used or consumed by the restaurant.

(2) Food and food ingredients and prepared food donated by a restaurant to charity shall not be subject to the tax.

Section 5. The tax imposed by a city on a restaurant pursuant to KRS 91A.400 shall be classified as a license tax that when passed on to customers shall constitute gross receipts subject to sales tax according to the provisions of KRS 139.010.

Section 6.

(1) This administrative regulation shall replace Revenue Circular 51C001-S2 and Revenue Policy 51P345.

(2) Revenue Circular 51C001-S2 and Revenue Policy 51P345 are rescinded and shall be void.

Section 7. Forms. The forms listed within this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;

(2) A Kentucky Taxpayer Service Center; or

(3) The department Web site at http://revenue.ky.gov.

(33 Ky.R. 2804; 3151; eff. 5-4-2007; TAm eff. 5-20-2009; TAm eff. 6-22-2016; Crt eff. 1-28-2020; 46 Ky.R. 1287; 2025; eff. 4-1-2020.)