
**Rules of
Department of Revenue
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery
and Equipment Exemptions**

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Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue

Chapter 111—Sales/Use Tax—Machinery and Equipment Exemptions

12 CSR 10-111.010 Manufacturing Machinery and Equipment Exemptions

PURPOSE: Section 144.030.2(4) and (5), RSMo, exempts from taxation certain machinery, equipment, parts, materials and supplies. This rule explains what elements must be met in order to qualify for these exemptions.

(1) In general, the purchase of machinery, equipment, parts, and the materials and supplies solely required for the installation or construction of such machinery, equipment and parts, are exempt from sales tax if they are for replacement or for a new or expanded plant and they are directly used in manufacturing, mining, fabricating or producing a product which is intended to be sold ultimately for final use or consumption.

(2) Definition of Terms.

(A) Establish a new manufacturing plant—The complete and final construction of a facility and all of its component parts. Construction shall be deemed completed within a reasonable period of time after production begins.

(B) Expand existing manufacturing plant—The purchase of additional machinery, equipment and parts as a result of the physical enlargement of an existing manufacturing, fabricating or mining facility; or the addition of machinery, equipment and parts constituting improvements that result in an actual or potential: i) increase in production volume at the plant, ii) increase in employment at the plant, or iii) increase in the number of types or models of products produced at the plant. This actual or potential increase is measured in relation to the actual or potential production volume, employment or types or models of products produced at the plant before the machinery, equipment and parts were originally put into use at the plant. Documentation which may be provided to establish the requisite intent for potential increase in production include, but are not limited to, the following: capital expenditure authorization requests, production records, production plans, purchase invoices, work authorizations, plant equipment cost savings analysis or reports and asset justification reports.

(C) Fabrication—The process of transforming an item into a higher stage of development. It does not imply or signify manu-

facturing, but the meaning of the term is limited to cutting, carving, dressing, shaping; advancing an elementary shape to a higher stage of development; reworking and cutting shapes to required length.

(D) Machinery and equipment—Devices that have a degree of permanence to the business, contribute to multiple processing cycles over time and generally constitute fixed assets other than land and buildings for purposes of business and accounting practices.

(E) Manufacturing—i) the alteration or physical change of an object or material to produce an article with a use, identity and value different from the use, identity and value of the original; or ii) a process which changes and adapts something practically unsuitable for any common use into something suitable for common use; or iii) the production of new and different articles, by the use of machinery, labor and skill, in forms suitable for new applications; or iv) a process that makes more than a superficial transformation in quality and adaptability and creates an end product quite different from the original; or v) requires the manipulation of an item in such a way as to create a new and distinct item, with a value and identity completely different from the original. Manufacturing does not include processes that restore articles to their original condition (e.g., cleaning, repairing); processes that maintain a product (e.g., refrigeration); or processes that do not result in a change in the articles being processed (e.g., inspecting, sorting).

(F) Mining—The process of extracting from the earth precious or valuable metals, minerals or ores. This process includes quarrying, but does not include equipment used for water-well drilling or reclamation performed to restore previously mined land to its original state.

(G) Parts—Articles of tangible personal property that are components of machinery or equipment, which can be separated from the machinery or equipment and replaced. Like machinery and equipment, parts must have a degree of permanence and durability. Items that are consumed in a single processing and benefit only one production cycle are materials and supplies, not parts. Items such as: nuts, bolts, hoses, hose clamps, chains, belts, gears, drill bits, grinding heads, blades, and bearings, would ordinarily be considered as parts. Substances such as fuels and coolants that are added to machinery and equipment for operation are not parts. Substances such as lubricants, paint and adhesives that adhere to the surface of machinery and equipment but are not distinct articles of tangible personal property, are not

parts. These items would be considered as materials and supplies within the meaning of the exemptions.

(H) Producing—Includes the meanings of “manufacturing” and “fabricating,” and is used in connection with the creation of intangibles that are taxable but which are not manufactured or fabricated in the sense those terms are commonly understood, e.g., information organized by computer and then sold on tangible media.

(I) Product which is intended to be sold ultimately for final use or consumption—Tangible personal property, or any service that is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state, which is intended at the time of manufacturing, mining or fabrication to be sold at retail. Property or services cannot be considered to be “subject to” the tax of a state unless the property or services are actually to be sold at retail in that state or delivered to a retail customer in that state.

(3) Basic Application of Exemption.

(A) Direct use—In determining whether machinery, equipment and parts are used directly in producing a product, Missouri has adopted the integrated plant theory that permits a broad construction of the machinery, equipment and parts exemptions. The language “used directly in” exempts purchases of articles that are both essential and comprise an integral part of the manufacturing process. It is not sufficient to meet only one of these requirements. For example, items used in material storage or handling before the manufacturing process begins may be essential to the process, but are not an integral part of the manufacturing process and are therefore not used “directly” in manufacturing. The factors which determine whether an article is directly used are: whether the item is essential or necessary to the process; how close, causally, is the item to the production process; and whether the item operates harmoniously with other machinery to make an integrated and synchronized system. The direct use requirement is not limited to those items of machinery, equipment and parts that produce a direct physical change in the composition of the raw materials or work in process.

(B) New or expanded plant exemption—Pursuant to section 144.030.2(5), RSMo, purchases of machinery, equipment and parts to establish a new or to expand an existing manufacturing, mining or fabricating plant in Missouri which are used directly in manufacturing, mining or fabricating a product that is intended to be sold ultimately for final use or

consumption are not subject to tax. Purchases of the materials and supplies solely required for the installation or construction of such machinery and equipment are not subject to tax.

(C) Purchase by other than end user—The exemptions for machinery, equipment and parts in section 144.030.2(4) and (5), RSMo, do not require that the owner of the facility be the purchaser to qualify for the exemption or that the purchaser be the one who uses the machinery, equipment and parts in an exempt fashion. All that is required is that the machinery, equipment and parts are used in a tax-exempt manner. These exemptions “flow through” to the owner. For example, a real property improvement contractor may purchase exempt from tax the machinery, equipment, parts, materials and supplies solely required for installation or construction of such replacement items, if such items are to be used in a tax-exempt manner by the owner.

(D) Replacement—To be exempt under section 144.030.2(4), RSMo, the machinery, equipment and parts must replace an existing piece of machinery, equipment or parts. This can include machinery, equipment, or repair and maintenance parts that are identical to the items they replace, as well as items that are different from the ones they replace, such as replacement machinery, equipment or parts added for the purpose of improving or modifying the existing devices. The replacement machinery, equipment and parts must be used in a process that produces a product intended to be sold ultimately for final use or consumption.

(E) Replacement machinery, equipment and parts—Pursuant to section 144.030.2(4), RSMo, purchases of replacement machinery, equipment and parts which are used directly in manufacturing, mining, fabricating or producing a product that is intended to be sold ultimately for final use or consumption are not subject to tax. Purchases of the materials and supplies solely required for the installation or construction of such replacement machinery, equipment and parts are not subject to tax.

(F) Use for nonexempt purposes—In order for the machinery and equipment to be exempt from tax it need not be used exclusively or primarily for an exempt purpose. The purchaser must intend at the time of purchase to use and actually make material use of the machinery and equipment in an exempt capacity to qualify. The fact that it may also be used for nonexempt purposes will not prevent the purchase of the item from qualifying for the exemption. If several like items are purchased, some for exempt purposes and some for nonexempt purposes, only the num-

ber of items essential for the exempt use qualify for the exemption.

(4) Examples.

(A) A manufacturing company builds a physical addition to its existing building. It purchases new machinery to set up another assembly line to be located in the new addition. The new machinery may be purchased under the expanded plant exemption.

(B) A fabricating company purchases additional machinery to establish a second assembly line but it does not physically expand its existing building. Production capability is increased from five thousand (5,000) units a day to seven thousand five hundred (7,500) units per day. The machinery may be purchased under the expanded plant exemption.

(C) A manufacturing company purchases additional machinery to establish a second assembly line. It does not increase its existing building nor does it increase its production volume. The additional machinery does result in the hiring of three (3) additional employees. The machinery may be purchased under the expanded plant exemption.

(D) A manufacturing company purchases various parts including replacement parts, new parts for the purpose of modifying existing equipment to make it more efficient, and related materials and supplies to install the parts. The replacement parts, the new parts for modifying the equipment and the materials and supplies for the installation of these parts may be purchased under the replacement machinery, equipment and parts exemption.

(E) A fabricating company intends to build a new plant and have it up and running within a year. Some of the equipment that was originally intended to be part of the new plant does not arrive until three (3) months after the plant is completed. This equipment would be covered by the new plant exemption, because it was originally intended to be part of the new plant.

(F) A manufacturing company purchases various pieces of testing equipment for different purposes, including: i) to ensure that the seller’s product meets the tolerances claimed in its marketing literature, ii) to meet the customers’ specification requirements mandated by the sales agreement, and iii) to perform research and development on potential future products. The testing equipment for the first two (2) situations are directly used to manufacture a product intended to be sold ultimately for final use or consumption and would qualify for exemption. The testing equipment for research and development is not directly used in manufacturing a product

intended to be sold ultimately at retail and, therefore, would not qualify for exemption.

(G) A ceramic greenware manufacturer purchases six (6) initial greenware mug molds, which it is going to use to manufacture greenware mugs to be resold. All six (6) greenware mug molds would be exempt.

(H) A rock quarry purchases equipment to remove earth and overburden to expose the rock and to remove rock from the ground. It purchased separate equipment to crush the rock into gravel as a marketable product to be sold at retail. The equipment used to remove the overburden and rock from the ground would qualify as exempt mining equipment and the equipment used to crush the rock into gravel would qualify as exempt manufacturing equipment.

(I) A taxpayer operates a concrete manufacturing plant. It purchases three (3) replacement concrete mixing trucks and also adds four (4) additional concrete mixing trucks to expand its fleet. Taxpayer also purchased dump trucks to haul concrete slabs that had been manufactured in its plant. The replacement and new additional concrete mixing trucks are directly used in manufacturing and would qualify for the replacement machinery and equipment exemption in section 144.030.2(4), RSMo, and the expanded plant exemption in section 144.030.2(5), RSMo, respectively. The dump trucks would not qualify for exemption because they are not directly used in the manufacturing process. However, if the dump trucks were used in the plant to transport the slabs during the manufacturing process from one processing area to another within the manufacturing plant, these exemptions would apply.

(J) A taxpayer creates and sells a nontaxable information service product. To develop its product, taxpayer purchases computer hardware and software. Because taxpayer produces a nontaxable service product, it is not manufacturing a product intended to be sold ultimately for final use or consumption and, therefore its purchases of computer equipment are not exempt from tax.

(K) A taxpayer has exempt machinery and equipment used directly in manufacturing a taxable product. Taxpayer purchases: i) fuels, lubricants, and coolants for operation of the machinery and equipment; ii) paint and adhesives which will adhere to the surface of the machinery and equipment; and iii) replacement hoses and belts for the machinery and equipment. The fuels, lubricants, coolants, paint and adhesives added to the machinery and equipment for operation are not parts within the meaning of the exemptions. These items are materials and supplies. They are

exempt only if used for installation or construction of exempt machinery, equipment and parts. The hoses and belts may be purchased exempt from tax because they qualify as replacement parts.

(L) A manufacturing company has two (2) sets of storage devices. The first set stores work in process between two (2) separate production areas. The second set stores the finished goods after the manufacturing process has been completed. The first set of storage devices is used directly in manufacturing and thus falls within the exemption. The second set of devices is not directly used in manufacturing and is subject to tax.

(M) A manufacturing company uses pneumatic powered tools directly on its assembly line. It also has hand tools used to repair or adjust the machines throughout the plant. The pneumatic powered tools are exempt as machinery and equipment directly used in manufacturing. The hand tools do not qualify as machinery and equipment directly used in manufacturing and are taxable.

(N) A commercial photo developer uses "crop cards" to hold individual negatives in the film developing process which are discarded after a single use. The developer also uses tape to connect negative strips so that the negatives may be fed through its automatic film developing machinery and equipment. The crop cards and tape are consumable supplies, not parts or equipment, and therefore are subject to tax.

(O) A steel company manufactures steel products. It purchases train carloads of steel beams that are used in the plant to produce the products. The crane used to unload the steel beams at the plant is part of the integrated and synchronized system and is used directly in the manufacturing process. As long as there is a continuous progression from raw materials to finished product and there are no extended interruptions in the manufacturing process, the integrated and synchronized system begins when raw materials enter the plant site and ends when the finished product leaves the plant site.

(P) A taxpayer sells and installs computer hardware and software and provides information technology services to its customers. The hardware and software are tangible personal property subject to sales tax. The technology services are not subject to tax in Missouri but are subject to tax and the taxpayer remits sales tax to Texas. The taxpayer's purchase of machinery and equipment to develop its products and services is intended to manufacture a taxable product or a taxable service intended to be sold ultimately for final use or consumption. The purchase of machinery and equipment is exempt from tax.

(Q) A manufacturer purchases four (4) forklifts for use in its plant. The manufacturer intends to use two (2) forklifts to move work in process between two (2) manufacturing steps and the other two (2) for loading the finished product from its warehouse onto trucks. Even though all four (4) forklifts may be rotated between the functions, only the two (2) forklifts essential to the manufacturing process are exempt.

*AUTHORITY: section 144.270, RSMo 1994. * Original rule filed Aug. 31, 1999, effective March 30, 2000.*

**Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961.*

International Business Machines v. Director of Revenue, 958 S.W.2d 554 (Mo. banc 1997). In order for a product to be "intended to be sold ultimately for final use or consumption," the product produced must be tangible personal property or a taxable service. Taxpayer sold computer equipment to DST, which provided financial and ownership data for the mutual fund industry. The court held that DST's output was a nontaxable service and, therefore, denied its claim of exemption on its machinery and equipment purchases.

Concord Pub. House, Inc. v. Director of Revenue, 916 S.W.2d 186 (Mo. banc 1996). Use of computer system by newspaper publishing company to store, process and arrange information in computer system to be used in publishing newspapers was held to be manufacturing and the machinery and equipment was directly used in manufacturing taxable products.

Unitog Rental Services, Inc. v. Director of Revenue, 779 S.W.2d 568 (Mo. banc 1989). Taxpayer was in the business of furnishing industrial grade uniform clothing to various businesses pursuant to written rental agreement contracts. The court held that equipment used to launder garments was not "used in manufacturing," and thus the taxpayer was not entitled to an exemption from sales and use tax.

L & R Egg Co. v. Director of Revenue, 796 S.W.2d (Mo. banc 1990). Taxpayer purchased eggs from farmers, then processed and sold the eggs to retailers. The issue before the court was whether equipment used to clean, oil, inspect, weigh, grade, pack and mark chicken eggs was "manufacturing" equipment within the meaning of Section 144.030.2(5). The court held that the taxpay-

er's processing operation did not constitute manufacturing.

West Lake Quarry and Material Co. v. Schaffner, 451 S.W.2d 140 (Mo. banc 1970). This case defined manufacturing as a process that changes and adapts something practically unsuitable for any common use into something suitable for common use. The court found that rock-crushing equipment qualified for the manufacturing equipment exemption.

Heidelberg Central, Inc. v. Director of Revenue, 476 S.W.2d 502 (Mo. banc 1972). Defined manufacturing as producing of new and different articles, by the use of machinery, labor and skill, into forms suitable for new applications. Commercial printing qualified as manufacturing.

Jackson Excavating Co. v. Admin. Hearing Comm., 646 S.W.2d 48 (Mo banc 1983). Defined manufacturing as a process that makes more than a superficial change in the original substance; it causes a substantial transformation in quality and adaptability and creates an end product quite different from the original. Processing raw water into potable water was manufacturing.

House of Lloyd, Inc. v. Director of Revenue, 824 S.W.2d 914 (Mo. banc 1992). Defined the manufacturing process as one requiring the manipulation of an item in such a way as to create a new and distinctive item, with a value and identity completely different from the original.

Galamet, Inc. v. Director of Revenue, 915 S.W.2d 331 (Mo. banc 1996). Manufacturing consists of the alternation or physical change of an object or material in such a way that produces an article with a use, identity, and value different from the use, identity, and value of the original.

Capitol Con Crete, Inc. v. Director of Revenue, (A.H.C. 1987). Concrete mixing trucks purchased for use in a concrete manufacturing business qualified under Section 144.030.2(5) for exemption as machinery and equipment used to establish a new manufacturing plant and were held to be used directly in manufacturing a product to be sold for final use or consumption.

*Empire District Electric Co. v. Director of Revenue, (A.H.C. 1983). The issue was the taxability of a transformer, concrete, oil and antifreeze used in an electric generating facility. The Commission applied the "integrated plant" theory adopted by the Missouri Supreme Court in *Floyd Charcoal Co. v. Director of Revenue*, 599 S.W.2d 173 (Mo. banc 1980) and *Noranda Aluminum v. Missouri Department of Revenue*, 599 S.W.2d 1 (Mo. banc 1980). The Commission found that while Missouri had adopted the*

integrated plant theory, it is apparent from the limiting language of the statute that not all items used in the manufacture of a product are exempt from tax. The oil and antifreeze did not qualify as a "device" and thus could not be considered machinery or equipment. Also, the oil and antifreeze were not used solely for installation or construction of the machinery and equipment. The concrete used to construct duct banks to protect the electrical systems and manhole covers for access to the electrical systems were not used as an integral part of the manufacturing process and were not exempt. With respect to the step-up transformers, they had two functions. The function of transmission as contrasted with generation of electricity was considered to be nonexempt. The Commission held that transmission of electricity was not manufacturing, only the generation of the electricity. However, the transformer had a second function of starting the generator several times a year. Because the starting function was part of the manufacturing process, the transformer was exempt. The fact that it was also used for nonexempt purposes did not prevent it from qualifying for the exemption.

12 CSR 10-111.060 Material Recovery Processing Plant Exemption

PURPOSE: Section 144.030.2(4), RSMo, exempts from taxation machinery and equipment and certain materials and supplies used to establish new, or to replace or expand existing, material recovery processing plants in this state. This rule explains the elements that must be met in order to qualify for the exemption.

(1) In general, the purchase of machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, is exempt from tax if used to establish new, or to replace or expand existing, material recovery processing plants in this state.

(2) Definition of Terms.

(A) Material recovery processing plant—A facility which converts recovered materials into a new product, or to a different form which is used in producing a new product, and includes facilities or equipment used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but does not include motor vehicles used on highways.

(B) Recovered materials—Those materials that have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not they require subsequent separation and processing.

(3) Basic Application of Exemption.

(A) Machinery and equipment for new, or to replace or expand existing, material recovery processing plant—Purchases of machinery and equipment used to establish new, or to expand existing, material recovery processing plants in this state are not subject to tax. Purchases of the materials and supplies required solely for the operation, installation or construction of such machinery and equipment are not subject to tax.

(B) New, replacement or expanded plant—Machinery and equipment are exempt if used to establish a new, or replace or expand an existing, material recovery processing plant. Materials and supplies required solely for the operation, installation or construction of machinery and equipment used in establishing a new plant, or in replacing or expanding an existing plant are exempt.

(4) Examples.

(A) A new company purchases machinery and equipment to retread old tires. The company purchases old tires and with the use of the new machinery and equipment, it produces retread tires for sale. The machinery and equipment may be purchased under the material recovery processing plant exemption.

(B) A taxpayer recycles fuel. It processes both solid and liquid waste materials for use as a fuel in its cement manufacturing operation. The taxpayer uses shredders and pulverizers to grind the solid waste materials into sizes appropriate for processing. The taxpayer's mobile and conveyor systems are used to transport the solid and liquid wastes to different processes performed on the materials in taxpayer's facility. The fuel recycling facility would qualify as a material recovery processing plant because it converts recovered materials, solid and liquid waste materials, into a new product, fuels, that are then used to manufacture a new product, cement.

(C) Assuming the same facts as in example (4)(B), the taxpayer purchases lubricants to operate its machinery and equipment. Because the lubricants are required solely for the operation of the machinery and equipment, they are not subject to tax.

(D) Taxpayer does not operate a material recovery processing plant but operates a facility used exclusively for the collection of recovered materials for delivery to a material recovery processing plant. Taxpayer purchases storage bins, conveyors and a special truck for hauling waste material to and from its facility. The storage bins and conveyors would be exempt from tax. The special truck would be considered a motor vehicle pursuant to section 301.010, RSMo, and would be subject to tax.

(E) A taxpayer operates a recycling business that purchases aluminum, paper and other products to be bundled and then sold to facilities which use them as raw materials to produce new and different products. A taxpayer purchases loaders, baling machines and crushing equipment to prepare the materials for sale and shipping. The loaders push the materials into the balers, which compress the recovered materials for shipping. Because the taxpayer is collecting recyclable materials and converts them into a different form, which is then used to produce new products, the taxpayer's operation would qualify as a material recovery processing plant. The loaders, baling machines and crushing equipment would qualify for the material recovery processing plant exemption if they were purchased and used to establish a new, or to replace or expand an existing plant.

AUTHORITY: sections 144.270 and 144.705, RSMo 1994.* Original rule filed Nov. 18, 1999, effective June 30, 2000.

*Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961; and 144.705, RSMo 1959.

Galamet, Inc. v. Director of Revenue, 915 S.W.2d 331 (Mo. banc 1996). The Missouri Supreme Court held that a scrap metal reprocessor was engaged in manufacturing, not recycling. Manufacturing consists of the alteration or physical change of an object or material in such a way that produces an article with a use, identity, and value different from the use, identity, and value of the original.