

Sec. 12-412(34)-1. Machinery used directly in a manufacturing production process

(a) **In General.** Section 12-412 (34) of the general statutes exempts from the sales and use taxes the sale, and the storage, use or other consumption, of machinery used directly in a manufacturing production process. Subsection (b) of this regulation defines the term “machinery.” Subsection (c) of this regulation defines the term “manufacturing.” Subsection (d) of this regulation defines the term “manufacturing production process.” Subsection (e) of this regulation defines the term “manufacturing plant.” Subsection (f) of this regulation provides examples of when machinery is “used directly” in a manufacturing production process. Said section 12-412 (34) does not exempt the sale, and the storage, use or other consumption of, all machinery, and subsection (g) of this regulation provides examples of “office equipment or data processing equipment,” the sale, and the storage, use or other consumption, of which are not exempt under said section 12-412 (34), and also provides examples of “numerically controlled machinery used directly in the manufacturing process,” the sale, and the storage, use or other consumption, of which are exempt under said section 12-412 (34). Subsection (h) prescribes the procedure to be followed in claiming the exemption from sales and use taxes provided by said section 12-412 (34). The term “predominantly” when used in this regulation means more than fifty percent. While this regulation pertains, for purposes of supplementary interpretation, as the phrase is used in section 12-2 of the general statutes, to said section 12-412 (34), the promulgation of this regulation is authorized by section 12-426 (1) of the general statutes.

(b) **Machinery.** As used in this regulation, the term “machinery” has the meaning ascribed to it in section 12-412 (34) of the general statutes. It is a device composed of solid, fluid or electrical parts assembled into a unit for the purpose of transmitting forces, motion and energy. While said section 12-412 (34) exempts from the sales and use taxes the sale, and the storage, use or other consumption, of machinery used directly in a manufacturing production process, it exempts from the sales and use taxes the sale, and the storage, use or other consumption, of component parts and contrivances of machinery used directly in a manufacturing production process if and only if those component parts and contrivances are sold in the same transaction with the basic machine. The term “component parts and contrivances” has the meaning ascribed to it in said section 12-412 (34). Such component parts and contrivances must be directly connected with, or be an integral part of, machinery.

(c) **Manufacturing.** As used in this regulation, the term “manufacturing” means an operation or an integrated series of operations that substantially transform, by physical, chemical or other means, the form, composition or character of raw or finished materials into a product possessing a new name, nature and use which is intended for sale, whether by the manufacturer or by another on whose behalf the manufacturer has undertaken the manufacture. The transformation cannot be a mere natural process, whether or not expedited by the use of machinery. If the transformation is not substantial, the process may only constitute fabrication. In such event the sale, and the storage, use or other consumption, of machinery used directly in such process will not be exempt from sales and use taxes. However, the sale, and the storage, use or other consumption, of materials, tools or fuel used directly in such fabrication in an industrial plant will be exempt from sales and use taxes. In determining whether a process constitutes manufacturing, the commissioner will examine the facts and circumstances of each case, using the following principles as

guidelines:

- (1) The process must occur at a manufacturing plant.
- (2) If the process involves chemical change to property rather than only physical change, it is more likely to be manufacturing. For example, the mere sorting of recyclable materials is not manufacturing, while using heat and chemicals to eliminate impurities, increase density and change the composition of recyclable materials so that they will meet certain metallurgical or chemical tolerances is manufacturing.
- (3) The process must be commonly regarded as manufacturing. For example, the operation of supermarkets and restaurants is not commonly regarded as manufacturing, while the operation of a bakery, where the baking of flour-and yeast-based foods is primarily for other than on-site sale, is commonly regarded as manufacturing.
- (4) If the process involves only physical change to property, the greater the degree of physical change, the more likely the process is to be manufacturing. For example, the process of cleaning, cutting and flash-freezing vegetables does not involve a sufficient degree of physical change to be considered manufacturing, while the process of quarrying and cutting brownstone into blocks of a size usable by building contractors does involve a sufficient degree of physical change to be manufacturing.
- (5) If the process involves production in standardized sizes and qualities and in multiple quantities, it is more likely to be manufacturing.
- (6) The generation of steam or electricity is not manufacturing.
- (7) The furnishing of gas, water, steam, electricity, telephone or community antenna television service is not manufacturing.
- (8) The development of software programs is not manufacturing.
- (9) The sale, and the storage, use or other consumption, of equipment used directly in the production and transmission of finished radio, television or cable television programming may be exempt from sales and use taxes under section 12-412 (44), but not under section 12-412 (34).

(d) **Manufacturing production process.** As used in this regulation, the term “manufacturing production process” means the activities or series of activities of which manufacturing consists, beginning with the movement of materials, after their receipt, inspection and storage, to the first production machine and ending with the packaging of the manufactured product for its sale to the ultimate consumer. The process does not include activities, such as the weighing, inspection and storage of materials, prior to the movement of materials to the first production machine (the first production stage), and does not include activities, such as the casing and loading of the manufactured product, subsequent to packaging (the last production stage).

(e) **Manufacturing plant**

(1) As used in this regulation, the term “manufacturing plant” means an establishment that has manufacturing as its predominant purpose and that is generally recognized as such. In determining whether an establishment has manufacturing as its predominant purpose, the commissioner will examine the facts and circumstances of each case, using the following principles as guidelines:

(A) If the floor space of the establishment is predominantly devoted to a manufacturing production process, it is more likely to be a manufacturing plant. Floor space of the

establishment devoted to research and development preliminary to such process will be considered to be floor space devoted to such process.

(B) If the number of employees working at the establishment are predominantly working in a manufacturing production process, it is more likely to be a manufacturing plant. The number of employees working at the establishment at research and development preliminary to such process will be considered to be employees working at such process.

(C) If the wages and salaries of employees working at the establishment are predominantly wages and salaries of employees working in a manufacturing production process, it is more likely to be a manufacturing plant. The wages and salaries of employees working at the establishment at research and development preliminary to such process will be considered to be wages and salaries of employees working at such process.

(D) If the costs of operating the establishment are predominantly attributable to the costs of the manufacturing production process, it is more likely to be a manufacturing plant. The operating costs of the establishment attributable to research and development preliminary to such process will be considered to be operating costs of such process.

(E) If sales made at the establishment are predominantly of products manufactured elsewhere, it is more likely that the manufacturing aspect of the establishment is incidental to its retail aspect, and it is less likely to be a manufacturing plant.

(2) The term “manufacturing plant” does not encompass cottage industries. The term “cottage industries” means establishments at which manufacturing takes place in a residential dwelling or in a building on the grounds of a residential dwelling. If an establishment is not located in an area zoned as commercial or industrial, or if residential use is among the uses being made of the establishment, it is less likely to be a manufacturing plant.

(f) **Used directly.** In determining whether machinery is used directly in a manufacturing production process, the commissioner will examine the facts and circumstances of each case, using the following principles as guidelines:

(1) Machinery that directly transforms, or has a direct effect upon, the form, composition or character of raw materials being manufactured into a product possessing a new name, nature and use which is intended for sale, whether by the manufacturer or by another on whose behalf the manufacturer has undertaken the manufacture, is used directly in a manufacturing production process.

(2) Machinery, other than machinery described in subdivision (1) of this subsection, that is used predominantly on the production line to perform an activity occurring during the manufacturing production process is used directly in a manufacturing production process. For example, machinery such as a forklift, crane or hoist used more than fifty percent of the time to move the materials being manufactured between machinery described in subdivision (1) of this subsection qualifies as machinery used directly in a manufacturing production process. Also, electric or hydraulic motors and air compressors used more than fifty percent of the time to power machinery described in subdivision (1) of this subsection qualify as machinery used directly in a manufacturing production process.

(3) Machinery, other than machinery described in subdivisions (1) and (2) of this subsection, (A) that is used exclusively to control or monitor an activity occurring during the manufacturing production process, or exclusively to design a product as well as to

control or monitor an activity occurring during the manufacturing production process (e.g., a computer aided design/computer aided manufacturing machine), and (B) that is directly linked with machinery described in subdivision (1) or (2) of this subsection, is used directly in a manufacturing production process. For example, a computer used exclusively to control or monitor, and directly linked to, machinery described in subdivision (1) or (2) of this subsection qualifies as machinery used directly in a manufacturing production process; however, a computer used to control or monitor machinery described in subdivision (1) or (2) of this subsection as well as for administrative purposes would not be used exclusively to control or monitor an activity occurring during the manufacturing production process, and, accordingly, would not be used directly in a manufacturing production process.

(4) Machinery used exclusively during the manufacturing production process to test (other than destructive testing) or measure materials and products being manufactured qualifies as machinery used directly in a manufacturing production process.

(5) Machinery that is used to perform an activity occurring prior to the first production stage of the manufacturing production process is not used directly in a manufacturing production process. For example, machinery used to inspect materials prior to the movement of such materials to the first manufacturing production machine would not be machinery used directly in a manufacturing production process.

(6) Machinery that is used to control or monitor an activity occurring subsequent to the last production stage of the manufacturing production process is not used directly in a manufacturing production process. For example, a computer used to control or monitor machinery that cases and loads manufactured products would not be machinery used directly in a manufacturing production process.

(7) Machinery that is used to repair or maintain machinery described in subdivision (1) of this subsection is not used directly in a manufacturing production process.

(8) Machinery that is used to manufacture tools which are used in the manufacturing production process is not used directly in a manufacturing production process.

(g) Office equipment or data processing equipment

(1) As used in this regulation, the term “office equipment or data processing equipment” means equipment that is not machinery used directly in a manufacturing production process under the principles set out in subsection (f) of this regulation. For example, a computer used, on the one hand, on a production line to control an activity occurring during a manufacturing production process and, on the other hand, to maintain inventory control and job costing financial records or for production scheduling would be office equipment or data processing equipment; however, if the computer were used exclusively on the production line to control an activity occurring during the manufacturing production process, it would not be office equipment or data processing equipment, but would be machinery used directly in a manufacturing production process.

(2) As used in this regulation, the term “numerically controlled machinery” means automated machinery that is controlled by a punched tape, the holes in which represent coded instructions for the machinery.

(3) As used in this regulation, the term “numerically controlled machinery used directly in the manufacturing process” means numerically controlled machinery that, under the principles set out in subsection (f) of this regulation, is used directly in a manufacturing

production process.

(h) Procedure

(1) The commissioner shall prescribe and furnish an exemption certificate that shall be completed and issued by the purchaser of machinery to the retailer thereof where the exemption from sales and use taxes provided by section 12-412 (34) of the general statutes is claimed to be applicable.

(2) The exemption certificate referred to in subdivision (1) of this subsection shall relieve the retailer from the burden of proving that the sale, and the storage, use or other consumption, of the machinery were not subject to sales and use taxes only if taken in good faith from a person who is engaged in manufacturing. The good faith of the retailer will be questioned if such retailer has knowledge of facts that give rise to a reasonable inference that the purchaser is not engaged in manufacturing or that the machinery will not be used directly in a manufacturing production process.

(3) If the machinery is not used directly in a manufacturing production process by a purchaser who issues an exemption certificate in good faith, then the use shall be deemed a retail sale by the purchaser as of the time that the machinery is first used by the purchaser, and the cost of the machinery to the purchaser shall be deemed the gross receipts from a retail sale by such purchaser.

(Effective April 23, 1991)