

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.330 Manufacturing Machinery and Equipment - EMERGENCY

**Section 130.330 Manufacturing Machinery and Equipment
EMERGENCY**

- a) General. Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. The exemption applies whether the sale or lease is made directly by the manufacturer or some other person. In certain cases purchases of machinery and equipment by a lessor will be exempt even though that lessor does not himself employ the machinery and equipment in an exempt manner.

- b) Manufacturing and Assembling.
 - 1) This exemption exempts from tax only machinery and equipment used in manufacturing or assembling tangible personal property for sale or lease. Thus, the use of machinery and equipment in any industrial, commercial or business activity which may be distinguished from manufacturing or assembling will not be an exempt use and such machinery and equipment will be subject to tax.
 - 2) The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining which changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant.
 - 3) The process or activity must be commonly regarded as manufacturing. To be so regarded, it must be thought of as manufacturing by the general public. Generally, the scale, scope and character of a process or operation will be considered to determine if such process or operation is commonly regarded as manufacturing. Manufacturing includes such activities as processing, fabricating and refining.
 - 4) Manufacturing does not include extractive industrial activities. Mining, logging, and drilling for oil, gas, and water neither produce articles of tangible personal property nor effect any significant or substantial change in the form, use or name of the materials or resources upon which they operate. The extractive process of quarrying does not constitute manufacturing. However, the activities subsequent to quarrying such as crushing, washing, sizing and blending will constitute

manufacturing, and machinery and equipment used primarily therefor will qualify for the exemption, if the process results in the assembling of an article of tangible personal property with a different form, use or name than the material extracted.

- 5) The printing process is not commonly regarded as manufacturing and court decisions have found that printing is not manufacturing. Therefore, machinery and equipment used in any printing application will not qualify for exemption. This includes graphic arts, newspapers, books, etc. as well as other industrial or commercial applications. (However, see Section 130.325 for the Graphic Arts Machinery and Equipment Exemption.)
 - 6) Agricultural, horticultural and related, similar or comparable activities, including commercial fishing, beekeeping, production of seedlings or seed corn, and the development of hybrid seeds, plants, or shoots, are not manufacturing or assembling and, accordingly, machinery and equipment used in such activities is subject to tax. (However, see Section 130.305 for the Farm Machinery and Equipment Exemption.)
 - 7) The preparation of food and beverages by restaurants, food service establishments, and other retailers is not manufacturing.
 - 8) Assembling means the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by the combination of existing materials in a manner commonly regarded as assembling which results in a material of a different form, use or name.
 - 9) Effective September 1, 1988 manufacturing includes photoprocessing if the products of photoprocessing are sold. Machinery and equipment which would qualify for exemption includes, but are not limited to, developers, dryers, enlargers, mounting machines, roll film splicers, film developing image makers, disc film opening and spindling devices, film indexers, photographic paper exposure equipment, photographic paper developing machines, densitometers, print inspection devices, photo print/negative cut assembly stations, film sleeve insertion machines, negative image producers, film coating equipment, photo transparency mounters, processor rack sanitizers, photo print embossers, photo print mounting presses, graphic slide generators, chemical mixing equipment and paper exposure positioning and holding devices, etc. Cameras and equipment used to take pictures or expose film are not eligible as the photoprocessing begins after the film is exposed. Retail/net price calculation equipment and chemical reclamation equipment are not considered to be manufacturing machinery and equipment.
- c) Machinery and Equipment
- 1) The law exempts only the purchase and use of "machinery" and "equipment" used in manufacturing or assembling. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be

used primarily in the manufacturing or assembling of tangible personal property for sale or lease. *However, the manufacturing and assembling machinery and equipment exemption includes production related tangible personal property that is purchased on or after July 1, 2007 and on or before June 30, 2008, as provided in Section 150.340 of the rules governing the Use Tax. See 86 Ill. Adm. Code §150.340.*

- 2) Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process: *including, machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment.*
- 3) *Equipment includes any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembling process: including computers used primarily in operating exempt machinery and equipment in a computer-assisted design, computer-assisted manufacturing (CAD/CAM) system; or any subunit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment, parts of machinery, such as tools, dies, jigs, fixtures, patterns and molds, and any parts which require periodic replacement in the course of normal operation. Beginning August 23, 2001, equipment includes computers used primarily in a manufacturer's computer-assisted design, computer-assisted manufacturing (CAD/CAM) system. For example, beginning August 23, 2001, a computer used by a manufacturer 25% of the time in operating exempt machinery and equipment (computer assisted manufacturing - CAM) and 75% of the time in design (computer assisted design - CAD) will now qualify for the exemption. Prior to August 23, 2001, a computer used in the manner described in the preceding sentence would not have qualified for the exemption because it did not primarily (over 50% of the time) operate exempt machinery and equipment. The exemption does not include hand tools, supplies (such as rags, sweeping or cleaning compounds), coolants, lubricants, adhesives, or solvents, items of personal apparel (such as gloves, shoes, glasses, goggles, coveralls, aprons, masks, mask air filters, belts, harnesses, or holsters), coal, fuel oil, electricity, natural gas, artificial gas, steam, refrigerants or water. (Section 2-45 of the Act)*
- 4) The exemption includes the sale of materials to a purchaser who manufactures such materials into an exempted type of machinery or equipment or tools which such purchaser uses himself in the manufacturing of tangible personal property or leases to a manufacturer of tangible personal property. However, such purchaser must maintain adequate records clearly demonstrating the incorporation of such materials into exempt machinery and equipment.
- 5) Machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment.
- 6) *The exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. The following examples are illustrative:*

- A) Example 1. A chemical acid is used to etch copper off the surface of a printed circuit board during the manufacturing process. The acid causes a direct and immediate change upon the product. The acid qualifies for the exemption.
- B) Example 2. An aluminum oxide catalyst is used in a catalytic cracking process to refine heavy gas oil into gasoline. In this process, large molecules of gas oil or feed are broken up into smaller molecules. After the catalyst is injected into the feed and used in the cracking process, it is drawn off and reused in subsequent manufacturing processes. The catalyst qualifies for the exemption.

d) Primary Use

- 1) The law requires that machinery and equipment be used primarily in manufacturing or assembling. Therefore, machinery which is used primarily in an exempt process and partially in a nonexempt manner would qualify for exemption. However, the purchaser must be able to establish through adequate records that the machinery or equipment is used over 50 percent in an exempt manner in order to claim the deduction.
- 2) The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery or equipment is used primarily in manufacturing or assembling.
- 3) By way of illustration and not limitation, the following activities will generally be considered to constitute an exempt use:
 - A) The use of machinery or equipment to effect a direct and immediate physical change upon the tangible personal property to be sold;
 - B) The use of machinery or equipment to guide or measure a direct and immediate physical change upon the tangible personal property to be sold, provided such function is an integral and essential part of tuning, verifying, or aligning the component parts of such property;
 - C) The use of machinery or equipment to inspect, test or measure the tangible personal property to be sold where such function is an integral part of the production flow;
 - D) The use of machinery and equipment to convey, handle, or transport the tangible personal property to be sold within production stations on the production line or directly between such production stations or buildings within the same plant;
 - E) The use of machinery or equipment to place the tangible personal property to be sold into the container, package, or wrapping in which such property is normally sold where such machinery or equipment is used as a part of an integrated manufacturing process;

- F) The production or processing of food, including the use of baking equipment such as ovens to bake bread or other bakery items, whether that baking is performed by a central bakery or a retail grocery store;
 - G) The use of machinery or equipment such as buffers, builders, or vulcanizing equipment to retread tires, whether or not the tire casing is provided by the purchaser.
- 4) By way of illustration and not limitation, the following activities will generally not be considered to be manufacturing:
- A) The use of machinery or equipment in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance, or improvement of real estate;
 - B) The use of machinery or equipment in research and development of new products or production techniques, machinery, or equipment;
 - C) The use of machinery or equipment to store, convey, handle or transport materials or parts or sub-assemblies prior to their entrance into the production cycle;
 - D) The use of machinery or equipment to store, convey, handle or transport finished articles of tangible personal property to be sold or leased after completion of the production cycle;
 - E) The use of machinery or equipment to transport work in process, or semifinished goods, between plants;
 - F) The use of machinery or equipment in managerial, sales, or other nonproduction, nonoperational activities including disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, sales, marketing, product exhibition and promotion, or personnel recruitment, selection or training;
 - G) The use of machinery or equipment to prevent or fight fires or to protect employees, such as protective equipment face masks, helmets, gloves, coveralls, and goggles or for safety, accident protection or first aid even though such machinery or equipment may be required by law;
 - H) The use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process;
 - I) The use of machinery or equipment in the preparation of food and beverages by a retailer for retail sale, i.e., restaurants, vending machines, food service establishments, etc.
 - J) The use of machinery or equipment used in the last step of the retail sale. Examples are paint mixing equipment used by a hardware store,

embroidery or monogramming machines used by tee-shirt retailers and a sewing machine used to hem garments sold by a clothing store.

- 5) An item of machinery or equipment which initially is used primarily in manufacturing or assembling and having been so used for less than one-half of the useful life is converted to primarily nonexempt uses will become subject to tax at the time of the conversion. Such tax will be collected on such portion of the price of the machinery or equipment as was excluded from tax at the time the sale or purchase was made.

e) Product Use

- 1) The statute requires that the product produced as a result of the manufacturing or assembling process be tangible personal property for sale or lease. Accordingly, a manufacturer or assembler who uses any significant portion of the output of his machinery or equipment, either for internal consumption or any other nonexempt use, or a lessor who leases otherwise exempt machinery and equipment to such a manufacturer or assembler, will not be eligible to claim the exemption on that machinery and equipment. No apportionment of production capacity between output for sale or lease and output for self-use will be permitted and no partial exemption for any item of machinery and equipment will be allowed.
- 2) The production of articles of tangible personal property for sale, a portion of which is diverted by the manufacturer thereof to use as sales samples or as the subjects of quality control testing which renders the articles unfit for sale, will nevertheless be deemed to be production for sale, provided such diversion represents only a small portion of the production of the articles of tangible personal property or of the sale of those articles.
- 3) Machinery and equipment used in the performance of a service, such as dry cleaning, is not used in the production of tangible personal property for sale and is thus taxable. However, a manufacturer or assembler who uses machinery and equipment to produce goods for sale or lease by himself or another, or to perform assembly or fabricating work for a customer who retains the manufacturer or assembler only for his services, will not be liable for tax on the machinery and equipment he uses as long as the goods produced either for himself or another are destined for sale or lease, rather than for use and consumption.

f) Sales to Lessors of Manufacturers

- 1) For this exemption to apply, the purchaser need not himself employ the exempt machinery or equipment in manufacturing. If the purchaser leases that machinery or equipment to a lessee-manufacturer who uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A supplier may exclude such sales from his taxable gross receipts provided the purchaser-lessor provides to him a properly completed exemption certificate and the information

contained herein would support an exemption if the sale were made directly to the lessee- manufacturer.

- 2) Should a purchaser-lessor subsequently lease the machinery or equipment to a lessee who does not use it in a manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax from which he was previously exempted.

g) Exemption Certificates

- 1) The user of such machinery or equipment and tools shall prepare a certificate of exemption for each transaction stating facts establishing the exemption for that transaction and submit the certificate to the retailer. The certificates shall be retained by the retailer and shall be made available to the Department for inspection or audit. The Department shall prescribe the form of the certificate. If the user has an active registration or resale number, that number may be given in lieu of the prescribed certificate.
- 2) If a manufacturer or lessor purchases at retail from a vendor who is not registered to collect Illinois Use Tax, the purchaser must prepare and retain in his files, the completed exemption certificate. The exemption certificate shall be available to the Department for inspection or audit.
- 3) A vendor who makes sales of machinery or equipment to a manufacturer or lessor of a manufacturer must collect Use Tax, and will owe Retailers' Occupation Tax, on that sale unless the purchaser certifies the exempt nature of the purchase to the vendor as set out above. The Summary Schedule, RR-586, must be submitted in lieu of taxes at the time the taxes are due.
- 4) In the case of a vendor who makes sales of qualifying machinery or equipment to a contractor who will incorporate it into real estate so that he, the contractor, would be the taxable user (see Sections 130.1940 and 130.2075 of this Part), the purchasing contractor should provide the vendor with a certification that the machinery or equipment will be transferred to a manufacturer as manufacturing machinery or equipment in the performance of a construction contract for the manufacturer. The purchasing contractor should include the manufacturer's name and registration number on the certification when claiming the exemption.

h) Opinions and Rulings

Informal ruling and opinion letters issued by the Department regarding the coverage and applicability of this exemption to specific devices will be maintained by the Department in Springfield. They will be available for public inspection and may be copied or reproduced at taxpayer's expense. Trade secrets or other confidential information in such letters will be deleted prior to release to public access files.

(Source: Emergency amendment at 32 Ill. Reg. _____, effective _____ for a maximum of 150 days)