



Manufacturing Exemption Information

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Wyoming Department of Revenue

Effective July 1, 2004, purchases of manufacturing machinery by qualified manufacturers are exempt from Wyoming sales or use tax when the machinery will be used in Wyoming in a manufacturing capacity, subject to the stipulations outlined in W.S. 39-15-105 and W.S.39-16-105. This exemption originally was set to expire in 2010 but was extended. In 2008, it was pushed back to 2011 and in 2011, it was again pushed back, this time until December 31, 2017. The 2017 legislative session extended the expiration date to December 31, 2027. The following is an explanation of the exemption itself and useful as a guide for purchasers and sellers to use in documenting proper use of the exemption.

W.S. 39-15-105(a)(viii)(O) and W.S. 39-16-105(a)(viii)(D)

These statutes exempt, until December 31, 2027, the sale or lease of machinery to be used in this state directly and predominantly in manufacturing tangible personal property, if the sale or lease: (I) Is to a manufacturer classified by the department under the NAICS code manufacturing sector 31 - 33; and (II) Does not include noncapitalized machinery except machinery expensed in accordance with section 179 of the Internal Revenue Code.

Requirements of the exemption

Before we address the machinery itself we will address the conditions placed on the

transaction. Subsection (I) requires that the sale be made to a manufacturer classified by the Department under the NAICS code manufacturing sector 31 – 33. NAICS refers to the Northern American Industry Classification System manual of 2002 that organizes establishments into industries on the basis of the activity in which they are primarily engaged, published by the United States Census Bureau. [W.S. 39-15-101(a)(xxii)] Consistent with this requirement, the Department has held that the invoice for the sale of the qualifying machinery must be billed to the manufacturer and paid by the manufacturer directly and not through a consultant, contractor or third party hired by the manufacturer.

There are many persons in Wyoming that do not normally consider themselves manufacturers but for the purposes of this exemption are engaged in manufacturing. In part the North American Industrial Classification System (NAICS) defines manufacturers as “...establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products.” It goes on to say “Establishments in the Manufacturing sector are often described as plants, factories, or mills and characteristically use power-driven machines and materials-handling equipment. However, establishments that transform materials or substances into new products by hand or in the worker's home

and those engaged in selling to the general public products made on the same premises from which they are sold, such as bakeries, candy stores, and custom tailors, may also be included in this sector. Manufacturing establishments may process materials or may contract with other establishments to process their materials for them. Both types of establishments are included in manufacturing.”

The second requirement, Subsection (II), requires that the manufacturing machinery in question must be used in this state and not be non-capitalized machinery except machinery expensed in accordance with section 179 of the Internal Revenue Code. Rather than intervene within the federal expense requirement we have held that this must be a financial determination by the manufacturer himself and supportable in the event of an audit.

Lastly, as the statutes currently stand the sale or lease must be completed before December 31, 2027. This should be apparent by the date of the transaction on the bill of sale or similar documentation exchanged between buyer and seller and also those available to an auditor in the event of an audit.

Important definitions

Once these conditions are met, we focus ourselves with the items purchased or leased to determine whether they qualify as “manufacturing machinery.” To that end,

- “*Manufacturing*” means the operation of producing a new product, article, substance or commodity different from and having distinct nature, character or use from the raw or prepared material. [W.S.39-15-101(a)(xxi)]

- “*Machinery*” means all tangible personal property eligible for a sales tax exemption pursuant to W.S. 39-15-105(a)(viii)(O), used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function, the materials for the construction or repair of machinery, and machine tools. [W.S. 39-15-101(a)(xx)]
- “*Directly and predominantly in manufacturing*” means an item manufactured from inventoried raw or prepared material beginning at the point at which raw or prepared material is moved from plant inventory on a contiguous plant site and ending at a point at which manufacturing has altered the raw or prepared material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process shall be deemed to be used directly and predominately in manufacturing. [W.S. 39-15-101(a)(xix)]

In short, so long as the equipment is actively participating in the operation of producing a new product, article, substance or commodity within the State of Wyoming this exemption provides for the basic unit, attachments and adjuncts necessary for the basic unit to accomplish its intended function, construction or repair materials for the aforementioned and machine tools. Please note, the Department holds that in order for machine tools to qualify, they must be unique to the machinery; as such,

common tools with a variety of applications or usable on a variety of machines do not qualify. The exemption also includes material handling equipment if used from one direct production step to another in a continuous flow and testing equipment utilized within the manufacturing process. However, absent from this exemption is labor for the construction, installation or repair of the qualifying machinery and any maintenance (materials or labor) necessary during the machinery's useful life.

Service charges for installation or repair of manufacturing machinery

Because labor and services charges for installation, repair or maintenance are not covered by the manufacturing machinery exemption, we must address how tax will apply to these charges as well. In Wyoming sales tax is applied to services that repair, alter or improve tangible personal property as well as installation services that do not render the item part of the real property but sales tax is not imposed on services that repair, alter, improve or construct real property. [W.S. 39-15-103(a)(i)(J); WY Dept. of Rev Rules, Chap 2, Sec 10(c)]

As defined, real property means land and appurtenances, including structures affixed thereto. An article shall be considered real property if: (A) It is buried or embedded; or (B) It is physically or constructively annexed to the real property; and (C) It is adapted to the use of the real property; and (D) Considering the purpose for which the annexation was made, one can reasonably infer that it was the intent of the annexing party to make the article a permanent part of the real property. [W.S. 39-15-101(a)(v)] The definition of real property is both a statement and a test. The first sentence posits that the item must be land or an appurtenance to the land. When an item does

not meet the statement portion of the definition we look to the test. In the test, the item must either meet part (A) or it must meet parts (B), (C) and (D). A telephone pole meets the test of part (A) because it is embedded in the ground and sometimes concreted in place. However, something like a home furnace would have to be taken through parts (B), (C) and (D) since it is neither land, an appurtenance to the land nor is it buried or embedded in the land. A home furnace will meet the test because it is physically or constructively annexed through it being hardwired to any electrical, hard plumbed to water or gas lines, and ducted through the walls and ceilings of the structure. This satisfies part (B); Part (C) is satisfied because a home furnace is adapted to the use of the property – it provides air exchange and heating to a home; and it can be expected that the intent of the annexing party was to make the furnace permanent at the home for the furnace's useful life which satisfies part (D). In contrast a window wall unit air conditioner or space heater may offer some of the same purposes as a furnace but would not meet the definition of real property because of the lack of annexation required in part (B) and the intended permanence of part (D).

For those machines and equipment that through their installation meet the definition of real property, the service to install them is not taxable to the company receiving the service. [WY Dept. of Rev Rules, Chap 2, Sec 10(c)] In addition any on-site service to repair, alter or improve the item, including maintenance, is also not subject to Wyoming sales tax. The person performing the service is defined as a contractor and furthermore is responsible for sales/use tax on any materials or supplies purchased by them in order to perform their service. [W.S. 39-15-301(a)(i)(ii); W.S. 39-15-303(b)(i); W.S. 39-16-303(b)(i)] For example, if a contractor is

hired to permanently place a piece of machinery to become part the realty any concrete, reinforcing steel, fasteners, etc. purchased by the contractor to affect the installation are taxable to him and built into his service price like overhead and profit, but in no event would he charge a line item for sales tax. Similarly if the contractor were engaged to change the oil or filters in a qualifying piece of machinery that, at the time of the service, met the real property conditions, the materials and supplies to affect the service are taxable to the contractor and again the labor would not be subject to tax. The resulting invoice to the manufacturer would have sales tax entrenched in the overall price but it would not be evident on the invoice, bill of sale or similar document exchanged between parties.

Further discussion of the tax obligation faced by contractors and their unique reporting requirements is available in our publication, Sales and Use Tax Guidelines for the Construction Industry available on our website.

For tax purposes, real property, once installed, is considered inseparable from its installed location. In reality though, certain repairs require that a portion of the equipment be removed in order to be serviced. When an item is de-annexed from the realty and repaired elsewhere, the repair cannot be considered work to real property since the portion being repaired cannot meet the definition of real property while it is de-annexed. In these cases, the item would be considered tangible personal property, defined as anything perceptible to the senses. In addition there are some items that never transition to real property through their installation. In these cases, Wyoming imposes sales tax on services which repair, alter, or improve tangible personal property.

[W.S. 39-15-103(a)(i)(J)] Sales tax is imposed not only on the labor or service charges but also on any charges for materials, supplies and fabrication used in rendering the service. [WY Dept. of Rev Rules, Chap 2, Sec 13(dd)]

As it would apply to the repair of a piece of qualifying manufacturing machinery considered tangible personal property, it is necessary for the service provider to itemize his invoice. This would allow the service provider to accept the manufacturer's exemption for any qualifying parts and materials used in the repair but still charge the manufacturer sales tax for the labor and other non-exempt charges. If the service provider does not itemize the invoice then the entire charge must be taxed as Wyoming law and Departmental Rules do not allow for the charges to be broken down internally. [WY Dept. of Rev Rules, Chap 2, Sec 7(a)]

Who may make purchases of qualifying manufacturing machinery exempt from sales tax?

Finally, as noted above, only qualified manufacturers can avail themselves of the exemption. This means that consultants, contractors and third party purchasing agents cannot purchase on behalf of the manufacturer. While they may be instrumental in negotiating the best price and/or ensuring all of the elements are compatible, the actual sale of the exempt manufacturing machinery must be billed to and paid by the manufacturer directly with the vendor/supplier. In order for a manufacturer to claim the exemption they are required to provide their supplier with a properly completed Streamlined Sales and Use Tax Agreement Certificate of Exemption. When utilizing this exemption, the manufacturer should indicate their most appropriate business type in Section 4 (e.g.

06 – Manufacturing) and in Section 5, circle “I – Industrial Production/Manufacturing” and include the statutory citation for the exemption (e.g. W.S. 39-15-105(a)(viii)(O) or W.S. 39-16-105(a)(viii)(D)) in the accompanying space provided. The form and specific instructions is also available on our website.

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to:

DOR_taxability@wyo.gov

Supporting Authority -

W.S. 39-15-101(a)(v)

"Real property" means land and appurtenances, including structures affixed thereto. An article shall be considered real property if:

- (A) It is buried or embedded; or
- (B) It is physically or constructively annexed to the real property; and
- (C) It is adapted to the use of the real property; and
- (D) Considering the purpose for which the annexation was made, one can reasonably infer that it was the intent of the annexing party to make the article a permanent part of the real property.

W.S. 39-15-101(a)(ix)

"Tangible personal property" means all personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam and prewritten

computer software; and includes any controlled substances as defined by W.S. 35-7-1002(a)(iv) which are not sold pursuant to a written prescription of or through a licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

W.S. 39-15-101(a)(xix)

"Directly and predominantly in manufacturing" means an item manufactured from inventoried raw or prepared material beginning at the point at which raw or prepared material is moved from plant inventory on a contiguous plant site and ending at a point at which manufacturing has altered the raw or prepared material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process shall be deemed to be used directly and predominantly in manufacturing;

W.S. 39-15-101(a)(xx)

"Machinery" means all tangible personal property eligible for a sales tax exemption pursuant to W.S. 39-15-105(a)(viii)(O), used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function, the materials for the construction or repair of machinery, and machine tools;

W.S. 39-15-101(a)(xxi)

"Manufacturing" means the operation of producing a new product, article, substance or commodity different from and having a distinctive nature, character or use from the raw or prepared material;

W.S. 39-15-101(a)(xxii)

"NAICS" means the Northern American Industry Classification System manual of

2002 that organizes establishments into industries on the basis of the activity in which they are primarily engaged;

W.S. 39-15-103(a)(i)(J)

Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

The sales price paid for services performed for the repair, alteration or improvement of tangible personal property;

W.S. 39-15-105(a)(viii)(O)

For the purpose of exempting sales of services and tangible personal property as an economic incentive, the following are exempt:

Until December 31, 2027, the sale or lease of machinery to be used in this state directly and predominantly in manufacturing tangible personal property, if the sale or lease:

- (I) Is to a manufacturer classified by the department under the NAICS code manufacturing sector 31 - 33; and
- (II) Does not include noncapitalized machinery except machinery expensed in accordance with section 179 of the Internal Revenue Code.

W.S. 39-15-301(a)(i)

"Contractor" means any general or prime contractor or subcontractor;

W.S. 39-15-301(a)(ii)

"General or prime contractor" means:

(A) Any person who agrees with the owner or lessee of real property in this state to perform services or furnish materials and services for the construction, alteration, improvement or repair of real property in this state; or

(B) Any person who acts in behalf of the owner or lessee of real property in this state to arrange for the furnishing of services or the furnishing of materials and services for the construction, alteration, improvement or repair of real property in this state; or

(C) Any person who owns or leases real property in this state for the purpose of developing that property and in the development thereof alters or makes improvements to the property or contracts for the alteration or improvement of the property.

W.S. 39-15-303(b)(i)

Any contractor who furnishes tangible personal property under contract or in the development of real property is the consumer or user of the tangible personal property within the meaning of the sales tax laws of Wyoming;

W.S. 39-16-101(a)(xiii)

"Directly and predominantly in manufacturing" means an item manufactured from inventoried raw or prepared material beginning at the point at which raw or prepared material is moved from plant inventory on a contiguous plant site and ending at a point at which manufacturing has altered the raw or prepared material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process shall be deemed to be used directly and predominantly in manufacturing;

W.S. 39-16-101(a)(xiv)

"Machinery" means all tangible personal property eligible for a use tax exemption

pursuant to W.S. 39-16-105(a)(viii)(D), used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function, the materials for the construction or repair of machinery, and machine tools;

W.S. 39-16-101(a)(xv)

"Manufacturing" means the operation of producing a new product, article, substance or commodity different from and having a distinctive nature, character or use from the raw or prepared material;

W.S. 39-16-101(a)(xvi)

"NAICS" means the Northern American Industry Classification System manual of 2002 that organizes establishments into industries on the basis of the activity in which they are primarily engaged;

W.S. 39-16-105(a)(viii)(D)

For the purpose of exempting sales of services and tangible personal property as an economic incentive, the following are exempt: Until December 31, 2027, the purchase or lease of machinery to be used in this state directly and predominantly in manufacturing tangible personal property, if the sale or lease:

(I) Is to a manufacturer classified by the department under the NAICS code manufacturing sector 31 - 33; and

(II) Does not include noncapitalized machinery except machinery expensed in accordance with section 179 of the Internal Revenue Code.

W.S. 39-16-303(b)(i)

Any contractor who furnishes tangible personal property under contract or in the development of real property is the consumer or user of the tangible personal property within the meaning of the use tax laws of Wyoming;

WY Dept. of Rev Rules, Chap 2, Sec 7(a)

General. Non-taxable transactions, including sales made for resale, shall be shown separately from taxable charges on sales invoices. The entire invoice amount shall be subject to the sales/use tax if the nontaxable or exempt charges are not separately shown and distinguishable from taxable charges.

WY Dept. of Rev Rules, Chap 2, Sec 10(c)

Charges for labor to alter, improve, or construct real property are not subject to sales/use tax except where imposed by statute under W.S. 39-15-103(a)(i)(K).

WY Dept. of Rev Rules, Chap 2, Sec 13(dd)

Repairs, Alterations and Improvements. Labor or service charges for the repair, alteration or improvement of tangible personal property, as well as charges for materials, supplies and fabrication used in rendering such services shall be subject to the sales tax. The purchase of materials, supplies and fabrication which become an ingredient of the repair, alteration or improvement of tangible personal property shall be considered wholesale sales. Labor or service charges for repairs, alterations or improvements of real property are not subject to the sales tax.