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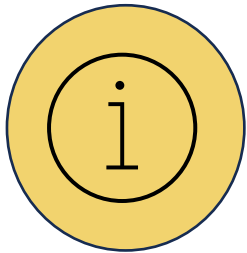
**SOLUTIONS BEYOND
THE OBVIOUS**

Sales Tax Refund Opportunities for
Manufacturers

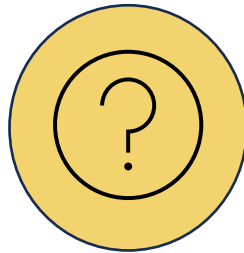
September 17, 2024

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Today's Presenters



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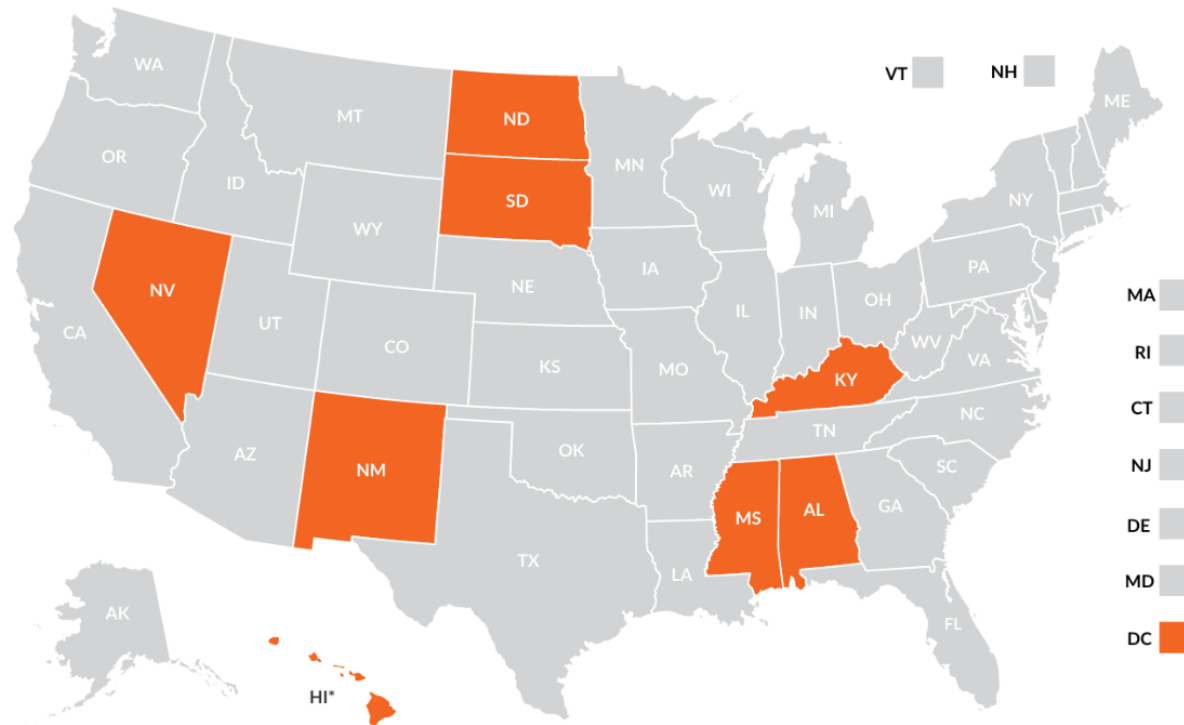
Webinar Objectives

- Overview
- Purchases by Manufacturers
- Refund Review
- Questions



Does Your State Tax Manufacturing Machinery?

Sales Taxes on Manufacturing Machinery, 2019



Note: DE, MT, NH, and OR have no sales tax. Alaska has a local option sales tax.
*Hawaii taxes both manufacturing machinery and manufacturing raw materials.

Source: Tax Foundation; Commerce Clearing House; state statutes.

■ Taxes Manufacturing Machinery

■ Does Not Tax Manufacturing Machinery

Notes:

- (1) AL, MS – Some items are taxable at reduced rate for machinery.
- (2) KY – M&E for new and expanded industry is exempt from tax.
- (3) ND – M&E used in a new plant or in a physical or economic expansion of an existing plant is exempt from tax.
- (4) NM – some purchases maybe deductible

Overview

- The Production Exemption
 - Businesses that produce tangible personal property, gas, electricity, refrigeration or steam (products) **for sale** are entitled to certain exemptions from New York State and local sales and compensating use taxes.

Overview

- The exemption is for certain purchases for machinery, equipment, parts, tools, supplies, utilities and fuel used or consumed in the production process.
- Purchases for use in activities that take place before the production process begins, or after the production process ends, do not qualify for exemption.

Overview

- ***Production*** is the means by which products are created using one or more of the following operations (or production processes):
 - Manufacturing
 - Processing
 - Assembling
 - Generating
 - Refining
 - Mining
 - Extracting

Overview

- Beginning and End of the Production Process
 - It is important to identify when the production process begins and ends since property, utilities and fuel used in activities that occur *before* the production process begins, or *after* the production process ends, **are not eligible** for the production exemption.

Overview

- The point at which production begins and ends depends upon the procedures used in a particular operation:
- In manufacturing, processing and assembling operations:
 - The production process generally *begins* when the materials that serve as raw materials for the process are received at the production site.
 - The production process *ends* when the product is completed, packaged and ready to be sold (i.e. enter the stream of commerce).

Purchases by Manufacturers

- Purchases That Qualify for the Production Exemption
 - The production exemption applies to purchases of machinery and equipment, parts, tools and supplies used *directly* and *predominantly* in the production process.

Purchases by Manufacturers

Directly

- Property must do one of the following during the production phase of a process:
 - Act upon or effect a change in material to form the product to be sold; or
 - Have an active causal relationship in the production of the product to be sold; or
 - Be used in the handling, storage or conveyance of materials, or the product to be sold; or
 - Be used to place the product to be sold in the package in which it will enter the stream of commerce.

Purchases by Manufacturers

Predominantly

- Over 50% of the property's use must be in the production phase of a process.

Purchases by Manufacturers

➤ Raw Materials

- Raw materials used in production and certain supplies, such as chemicals and catalysts which become physical components of the final product for sale, may be ***purchased for resale*** and are therefore not subject to state or local taxes.
 - Use Form [ST-120, Resale Certificate](#) to purchase raw materials and qualifying supplies without paying sales tax on the purchase.

Purchases by Manufacturers

- Machinery and Equipment
 - To be eligible for the production exemption, machinery and equipment must be used directly and predominantly (more than 50% of the time) in the production of tangible personal property, gas, electricity, refrigeration or steam for sale.
 - Use Form [ST-121, Exempt Use Certificate](#) to purchase machinery and equipment without paying sales tax on the purchase.

Purchases by Manufacturers

- Charges to a manufacturer for installing, maintaining, servicing or repairing exempt production machinery and equipment are also exempt from sales tax.
 - ***Installing*** means setting up or putting something in place for use.
 - ***Maintaining, servicing*** and ***repairing*** are terms used to cover all activities that relate to keeping things in a condition of fitness, efficiency, readiness or safety; or restoring them to such condition.

Purchases by Manufacturers

- Material Handling Equipment
 - If fork trucks and other equipment are used predominantly (more than 50% of use) to unload raw materials or to move materials to storage or other areas of the production process, such equipment may be purchased exempt from tax as production equipment [\[TSB-A-02\(17\)S\]](#).
 - Petitioner's use of forklifts to move the finished product from the end of the production line to the yard, and to load the finished product onto trucks for shipment from the plant, are used in the distribution phase rather than the production phase [\[TSB-A-04\(22\)S\]](#).

Purchases by Manufacturers

➤ Parts Used in Production

- Purchases of parts are exempt from all state and local sales and use taxes when the parts are installed on machinery or equipment used directly and predominantly in production.

Purchases by Manufacturers

➤ Tools Used in Production

- Tools are manually operated implements used to perform a task. The purchase, by a manufacturer, of tools to be used directly and predominantly in production are exempt from state and local sales and use taxes.
- Examples of qualifying tools are tools used to attach and detach parts (like molds or forms) of production M&E and tools actually used in production.

The purchase of tools used in the general maintenance, repair or servicing of production machinery and equipment is taxable.

Purchases by Manufacturers

➤ Supplies Consumed in Production

- Purchases of supplies (such as oil, grease, sandpaper, solvents or thinners), used directly and predominantly in the production process are exempt from state and local sales and use taxes.
- Supplies are used directly and predominantly in the production process when they are used in the maintenance of exempt production machinery, equipment, parts and tools.

Purchases by Manufacturers

➤ Motor Fuel / Diesel Motor Fuel

- Motor fuel (such as gasoline or liquefied petroleum gas) and enhanced diesel motor fuel cannot be purchased tax exempt.
- A refund may be claimed for state and local sales tax (except the local sales tax imposed within NYC) paid on purchases of motor fuel that is used directly and exclusively in the production process.
 - The refund may be claimed by filing [Form FT-500, Application for Refund of Sales Tax Paid on Automotive Fuels.](#)

Purchases by Manufacturers

➤ Computer Software

- For software to be exempt from state and local sales and use tax, it must be used to run exempt production machinery or equipment.
- Petitioner's ERP software does not directly interact with the item being produced. Rather, it provides information about tracking, scheduling, costs and shipping. These activities are administrative and distribution activities, not production activities. Thus, the software is not used directly in the production process [\[TSB-A-15\(44\)S\]](#).

Purchases by Manufacturers

- Cartons, Containers & Other Packaging Materials
 - Packaging and wrapping materials used by a manufacturer in packing a product to be sold may be eligible for exemption.
 - To qualify, the materials must actually be transferred with the product to the purchaser and become the property of the purchaser.
 - Examples include bags, bottles, boxes, cans, cartons, cellophane, drums, pallets, sacks, spools, staples, strapping, string, tape, twine and wrapping paper.

Purchases by Manufacturers

➤ Labels and Tags

- Purchases of labels or tags may be exempted from tax as purchases for resale, if the label or tag forms a ***critical element*** of the product to be sold.
- A label or tag becomes a critical element of the product sold if it serves a useful purpose to the retail customer after the point of the retail sale.

Purchases by Manufacturers

- Safety Apparel and Supplies
 - Safety apparel and safety supplies (such as uniforms, hair coverings, safety shoes, gloves and eye shields) that are indispensable to production, and that are **furnished by the manufacturer to the manufacturer's employees**, are exempt from both the state and local sales and use taxes.

Purchases by Manufacturers

➤ Quality Control

- The purchase of machinery and equipment by a manufacturer for use directly and predominantly in quality control of the manufactured product **while it is still on the production line** is exempt from all state and local sales and use taxes.
- The quality control facilities may be located within the production area or in a separate laboratory.

Purchases by Manufacturers

- Waste Treatment Equipment
 - Purchases of machinery or equipment for use or consumption **directly** and **predominantly** in the control, prevention or abatement of pollution or contaminants from manufacturing or industrial facilities are exempt from the New York sales and use tax.

Purchases by Manufacturers

➤ Research and Development

- The purchase of tangible personal property used ***directly*** and ***predominantly*** in research and development in the experimental or laboratory sense is exempt from sales and use taxes.
 - Basic research in a scientific or technical field.
 - Advancing the technology in a scientific or technical field.
 - The development of new products.
 - The improvement of existing products.
 - Developing new uses for existing products.

Purchases by Manufacturers

➤ Utilities

- Fuel gas, electricity, refrigeration and steam; and gas, electric, refrigeration and steam service of whatever nature for use or consumption **directly** and **exclusively** in the production of tangible personal property for sale, by manufacturing, processing, assembling, generating, refining, mining or extracting shall be exempt.

Purchases by Manufacturers

➤ Utilities

- **Directly** means the fuel, gas, electricity, refrigeration and steam and like services must during the production phase of a process, either:
 - Operate exempt production machinery or equipment;
 - Create conditions necessary for production; or
 - Perform an actual part of the production process.
- **Exclusively** means that the fuel, gas, electricity, refrigeration and steam and like services are used in total (100%) in the production process.

Purchases by Manufacturers

➤ Utilities

- When gas, electricity and other energy sources are used in both production and non-production activities, they are often supplied through the same meter.
- An allocation must be made to determine the portion used directly and exclusively in production.
 - For purposes of substantiating the allocation of fuel, gas, electricity, refrigeration and steam used directly and exclusively in production from that used for nonexempt purposes, the user must, when claiming a refund or credit, **submit an engineering survey or the formula used in arriving at the amounts used in an exempt manner.**

Refund Review

- Paying the correct amount of sales and/or use tax on purchases is a common problem for manufacturers.
 - How to address this issue:
 - Conduct an internal refund review
 - Hire an experienced third-party firm to review your purchases for overpayments
 - Waiting to be audited by the NYS Dept. of Taxation & Finance is not a good option

Refund Review

- Benefits of conducting a refund review:
 - Recover sales and use tax paid in error on nontaxable purchases
 - Identify and correct compliance issues and potential exposure in a timely manner
 - Implement best practices
 - Train staff

Refund Review

➤ Refund Review Process

1. Learn about production process
2. Gather necessary data and documents
3. Review purchase invoices and supporting documentation
4. File refund claim
5. Discussions/correspondence with state refund unit or auditors
6. Receive refund check, reconcile refund schedules and/or consider filing appeal for any refunds that were denied
7. Implement changes to compliance process (if applicable)

Refund Review

- Filing Refund Claims (NY)
 - You must submit your application within three years from the date the tax was due to the Tax Department, or two years from the date you paid the tax, whichever is later.
 - Form AU-11, *Application for Credit or Refund of Sales or Use Tax*, is the most commonly used refund form. You may submit this form using Sales Tax Web File if you have an Online Services account for your business.
 - If you are a business registered for sales tax, you may claim a credit against your sales tax due on your sales tax return. A credit will reduce the amount you owe.

Refund Review

- Filing Refund Claims (NY)
 - Your refund claim needs to be properly completed and signed and include all required documentation for the Tax Department to be start processing it.
 - The Tax Department is required by law to process a properly completed refund claim within six months after they receive it, but generally the review process will take less time.



Questions

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