

Sales Tax Information For:

- ▣ **Manufacturers**
- ▣ **Processors**
- ▣ **Generators**
- ▣ **Assemblers**
- ▣ **Refiners**
- ▣ **Miners and Extractors**
- ▣ **Other Producers of Goods and Merchandise**



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INTRODUCTION

This publication contains information about exemptions from New York State sales and compensating use taxes (including the ¼ % tax imposed within the Metropolitan Commuter Transportation District or MCTD), and local sales and compensating use taxes available to certain manufacturers of products for sale. It covers exemptions available on purchases of:

- machinery and equipment
- parts, tools and supplies
- fuel and utilities
- installation services
- repair and maintenance services

This publication also contains information about the exclusion from sales and use taxes relating to purchases of raw materials for resale, the exemptions available for purchases of property and services used in research and development, and the exemption available for eligible donations of property. The application of the compensating use tax to certain uses of tangible personal property purchased by producers of goods for sale is also covered in this publication.

The production operations eligible for the exemptions outlined in this publication are those that produce goods for sale by manufacturing, processing, generating, assembling, refining, mining or extracting operations.

This publication does not discuss the specific exemptions available to the following industries:

Farming. For information on the exemptions available to farmers, see Publication 844, *Sales Tax Information for Farmers*.

Fishing. The specific exemptions available to operators of commercial fishing vessels are not covered in this publication. Please contact the Tax Department for additional information on these exemptions.

Film and Motion Picture Producers. For information on the specifics of the exemptions and exclusions as they apply to film or motion picture producers, please see Publication 28, *A Guide To Sales Tax For The Film Industry*.

MCTD. In instances where the term *New York State* is mentioned within this publication relating to the imposition of sales and use taxes, the term includes the Metropolitan Commuter Transportation District, or MCTD (which is comprised of the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester, and the City of New York).

The information presented is current as of this publication's print date. In instances where there seems to be a discrepancy between the information presented and the Tax Law or regulations, the law and regulations govern.

Telephone numbers and addresses for obtaining forms, publications, or other information appear on the back cover of this publication.

PART I - GENERAL INFORMATION

The Production Exemption

The production exemption applies when products are produced for sale using one or more of the qualifying production processes

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. For purposes of this publication, we will refer to these exemptions, collectively, as *the production exemption*.

The production exemption applies only when products are produced **for sale**. This includes the mass production of standardized items, as well as the production of items based on a customer's specifications.

The exemption is for certain purchases of machinery, equipment, parts, tools, supplies, utilities, and fuel used or consumed in the production process.

Tangible personal property, utilities or fuel purchased for use in activities that take place before the production process begins, or after the production process ends, do not qualify for exemption.

Production Processes Defined

Production is the means by which products are created using one or more of the following operations (or production processes):

- manufacturing
- processing
- generating
- assembling
- refining
- mining
- extracting

Manufacturing

Manufacturing generally results in the creation of a product that is substantially different in form, character, composition, and usefulness from its components.

Example 1. A dressmaker purchases bolts of cloth from a textile manufacturer and uses patterns to cut the cloth into bodices, sleeves, and skirts. The dressmaker then stitches

those pieces together to form dresses. This is a manufacturing operation.

Example 2. A steel manufacturer combines iron with carbon to make commercial steel. This is a manufacturing operation.

Processing

Processing generally results in a change in the nature, shape, or form of materials.

Example 3. A textile manufacturer dyes bolts of cloth in different colors. The dyeing of the cloth is a processing operation.

Example 4. As part of the production of decorative landscaping stone, chunks of rock are passed through a series of rock crushers which reduce the chunks into smaller sizes. This is a processing operation.

Generating

Generating is the creation of a product (such as electricity, steam, or refrigeration) by means of a natural or chemical process.

Example 5. Hydroelectric power is produced by directing the course of water so that the water falls or flows over turbine blades. The action of the water falling or flowing over the blades creates energy. This energy is conveyed to a generator where it is converted into electrical energy (hydroelectric power). The production of hydroelectric power is a generating operation.

Assembling

Assembling is a manufacturing operation, or an adjunct to a manufacturing operation, that produces goods by fitting together various parts to make a complete product.

Example 6. A beer keg is made by welding aluminum discs together and attaching a plate and a tap to the welded aluminum. The production of the beer keg is an assembly operation.

Example 7. A manufacturer of television sets purchases cabinet components that are assembled to create television cabinets. The manufacturer also purchases picture tubes, circuitry boards, and other components. These components are assembled to create the internal mechanism, which is then installed in the cabinets to create complete television sets. This is an assembly operation.

Example 8. A wreath is made by covering a wire form with felt material and gluing pine cones, assorted dried leaves, berries, and dried flowers to the felt. This is an assembly operation.

Refining

Refining is the operation by which impurities or unwanted elements are removed from a product.

Example 9. Production of gasoline, motor fuels, and fuel oils from crude oil is a refining operation.

Example 10. Producing salt compounds by replacing all or part of the hydrogen acid content in raw, unrefined salt is a refining operation.

Mining

Mining is the operation by which minerals are removed from the earth through either surface excavations (such as open-pit mines and strip mines) or underground excavations. Mining includes any activities involved in the removal of the minerals from their original location. The preparation, washing, cleaning, or other processing of the minerals at the mine location is also part of the mining operation.

Example 11. Producing building stone, slate or limestone from a quarry is a *hard rock* mining operation.

Example 12. Dissolving an underground salt deposit with water and pumping the salt out of the ground is a *solution mining* operation.

Extracting

Extracting is a manufacturing operation, or an adjunct to a manufacturing operation, in which oil, gas, or mineral deposits are removed from their natural underground reservoirs.

Example 13. A company extracts iron ore in both open pit and underground mines. After the ore is extracted from the earth, rock, foreign materials, and other unwanted elements are sorted out. The ore is then crushed and washed. The removal and processing of the ore to remove its iron content is an extracting operation.

Example 14. Cutting and removing coal from the face of a coal seam is an extracting operation.

**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.

The point at which production begins and ends depends upon the procedures used in a particular operation.

**Manufacturing, Processing,
and Assembling Operations**

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 activities of receiving, unloading, and storing raw materials are considered a part of the production cycle as long as the raw materials are not weighed, inspected, measured, tested, or inventoried before being placed in the production line,

Example 15. A manufacturer of paper products orders raw material from a supplier. When the materials are received at the plant, the cases are unloaded and taken from the receiving dock directly to the storage area and placed in storage. The cases are counted as they are unloaded for the sole purpose of verifying the number of cases received with the number of cases shown on the shipping manifest. The raw materials are taken from storage as needed and placed directly in the production line. In this case, the production process begins with the unloading of the raw materials at the receiving dock.

If the raw materials are weighed, inspected, measured, tested, or inventoried before they are placed in storage, then the production process begins when the materials are placed in storage.

Example 16. The facts are the same as in Example 15, except that the raw materials are taken from the receiving area to a testing area in the plant where they are counted and tested for quality. From the testing area, the materials are transported to the storage area and placed in storage. In this case, the production process begins with placing the raw materials into storage.

The production process for manufacturing, processing, and assembling operations ends when the product is completed, packaged, and ready to enter the stream of commerce. (The on-site assembly of machinery or equipment at the site of the purchaser will sometimes be recognized as a continuation of

the manufacturing process. See *On-Site Assembly of Production Machinery and Equipment* on page 14.)

Example 17. A manufacturer who sells products by the pallet load has a palletizer system. The system consists of a pallet loader or palletizer (the machinery that automatically arranges cases into layers and stacks them on pallets), and the conveyor system which feeds the cased products into the palletizer. The system is used to prepare pallets containing one or more products. The finished product is labeled, packaged, and palletized before being shipped or placed into storage to await shipment. The pallets are transferred to the purchaser along with the products that are being sold. The palletizer system is part of the production line, and the production process ends when the finished product is palletized.

An interruption in the production cycle before the product is finished and ready for sale does not terminate the production process.

Example 18. A manufacturer who supplies private label food products sells the product by the pallet load. The finished products are placed in unlabeled cans and stored until purchase orders are received. When orders for a particular brand label are received, the product is returned to the production line where the brand label is applied to the container. The containers are then cased and palletized for shipment. The production process ends when the product is palletized and ready for sale.

Any activities that occur after the product is completed and in the form and packaging in which it will be sold are not part of the production process. This includes transporting the completed product from the production line for storage or shipment.

Example 19. A manufacturer of charcoal briquettes places the finished products into sacks which are then sewn closed. The sack is the packaging in which the finished product is sold. The sacks are transferred to storage to await shipment. When an order is received, the number of bags ordered is loaded onto a wooden pallet and secured to the pallet for shipment. Upon delivery, the product is unloaded and the pallet is returned to the manufacturer. In this situation, the production process ends when the sacks are sewn closed. The activities involved in palletizing and preparing the product for shipment are not part of the production process.

Refining Operations

In refining operations, the production process begins when the raw materials are received at the production site, provided the raw materials are not weighed, inspected, measured, tested, or inventoried before entering the production line. Generally, the production process is deemed to end when the product is ready for sale.

Example 20. Production of gasoline, motor fuels and fuel oils from crude oil is a refining operation.

Example 21. Producing salt compounds by replacing all or part of the hydrogen acid content in raw, unrefined salt is a refining operation.

Mining and Extracting Operations

In mining and extracting operations, production begins with the activities involved in preparing the production site for use.

Example 22. After a gas producer selects a drilling site, the site is prepared by clearing the terrain and building access roads. Clearing the land and constructing access roads is the beginning of the production process.

In *oil, gas and solution mining* operations, the production process ends at the point of sale to the first commercial purchaser (the first person to whom the product is sold for compensation).

In *other mining* operations, the production process ends when the product has been processed at the site and is in the form and condition in which it will be sold, including any packaging.

In *extracting* operations, the production process ends when the product has been processed at the site and is in the form and condition in which it will be sold, including any packaging.

Purchases That Qualify for the Production Exemption

The production exemption applies to purchases of machinery and equipment used **directly** and **predominantly** in the production process. Purchases of parts, tools, and supplies may also qualify for exemption. Purchases of certain maintenance and repair services performed on exempt production machinery and equipment, and on exempt parts, tools, and supplies, may qualify for exemption as well.

The production exemption also applies to purchases of fuel, gas, electricity, refrigeration, and steam, and gas, electric, refrigeration, and steam services used **directly** and **exclusively** in the production process.

The purchase of machinery or equipment used by a subcontractor to perform part of a production process may also be entitled to exemption as production machinery and equipment.

Purchases That Do Not Qualify for the Production Exemption

Purchases of tangible personal property, fuel, and utilities used in activities that occur before the beginning of the production process are not eligible for the production exemption. In addition, purchases of tangible personal property, fuel and utilities used in activities that are incidental or ancillary to the production process are not eligible for the production exemption. Incidental and ancillary activities include functions such as:

- purchasing, transporting, and testing raw materials;
- general office and collection work;
- clerical work related to production (such as preparation of work records, production records, and time records); and
- maintenance and janitorial services used to keep premises clean and in condition for operation of the production process.

Also excluded from the production exemption are purchases of tangible personal property, fuel, or utilities used in activities that occur after the production process ends (such as displaying, selling, casing, loading, or delivering finished goods).

Differences Between the State and Local Production Exemptions

Not all purchases that are exempt from the New York State portion of the sales or use tax are exempt from the tax imposed by the local jurisdiction in which the purchase transaction takes place.

The differences between the New York State production exemption and the exemption provided by the localities are discussed in this section.

Machinery and Equipment

Purchases of machinery and equipment used **directly** and **predominantly** in the production process are exempt from both New York State and local sales and use taxes.

Parts

Purchases of parts are exempt from both state and local sales and use taxes, when the parts are to be installed on exempt production machinery or equipment.

Tools and Supplies

Purchases of tools and supplies to be used **directly** and **predominantly** in production are exempt from both state and local sales and use taxes.

Installation, Repair and Maintenance Services

The services of installing, repairing, maintaining, or servicing exempt production machinery, equipment, parts, tools, and supplies are exempt from New York State sales and use taxes.

These services are also exempt from the local sales and use taxes imposed within New York City, when the services are delivered in New York City. However, these services are subject to the applicable local sales and use taxes, when delivered outside New York City.

Note: Prior to September 1, 1996, New York City imposed a sales tax on the services of installing, repairing, maintaining, or servicing exempt production machinery, equipment, apparatus, parts, tools, and supplies. The City provides a refundable credit against the City's General Corporation Tax (GCT) and Unincorporated Business Tax (UBT), respectively, for the amount of City sales tax (plus interest) paid on such services. The credit is available only for those taxes and related interest paid on or after January 2, 1995 (although the payment may relate to a taxable transaction that took place before January 2, 1995).

Coal, Gas, Electricity, Fuel Oil, and Other Energy Sources

Purchases of coal, gas, electricity, fuel oil, and other energy sources (other than motor fuel or diesel motor fuel) qualify for exemption at the time of purchase when such energy sources are to be used **directly** and **exclusively** in the production process. These purchases are exempt from state sales and use taxes, and local sales and use taxes other than the local sales and use taxes imposed within New York City.

The appropriate state and local sales taxes must be paid at the time motor fuel or diesel motor fuel is purchased. If the fuel is used **directly** and **exclusively** in the production process, a refund or credit of the state sales tax paid may be applied for. If the fuel is purchased outside New York City, a refund or credit of the local sales tax paid may be applied for as well.

Note: There is no exemption from the 4% local sales tax imposed in New York City on purchases of fuel, gas, electricity, refrigeration, steam, and related services used or consumed in production. Taxpayers who have paid the 4% local tax imposed in New York City on electricity and electric services used in qualifying manufacturing, processing or assembling operations are entitled to claim a refundable credit, equal to the amount of the tax paid, against the City's General Corporation Tax (GCT) or Unincorporated Business Tax (UBT).

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. *Research and development in the experimental or laboratory sense* means research which has as its ultimate goal:

- basic research in a scientific or technical field of endeavor;
- advancing the technology in a scientific or technical field of endeavor;
- developing new products;
- improving existing products; or
- developing new uses for existing products.

This exemption does not apply to expenses incurred to build or maintain facilities that are used in research or development, or the cost of desks, typewriters, and other office machinery or equipment used in administering research or development work. It also does not apply to the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical, or similar projects.

Purchases of fuel, gas, electricity, refrigeration, and steam, and of gas, electric, refrigeration, and steam services are exempt if used or consumed **directly** and **exclusively** in research and development in the experimental or laboratory sense. The portion used for heating and lighting the building (or the facility where research and development take place) is taxable.

The purchase of laboratory equipment used **directly** and **predominantly** in research and development is exempt.

Laboratory equipment includes, but is not limited to, items such as vacuum pumps, microscopes, centrifuges, measuring devices, electronic measuring equipment, or laboratory glassware (beakers, tubes, flasks and so forth). It also includes heating, cooling, and humidifying equipment used directly and predominantly to maintain a controlled atmosphere in a room or rooms used exclusively for research and development projects, and fuel or utility services to operate the equipment.

Purchases of Parts, Tools, and Supplies

Purchases of items such as screws, nuts, bolts, aluminum tubing, and similar supplies, for use in making laboratory models of experimental equipment (such as lasers), are exempt if the construction is performed in-house (that is, by the purchaser's own labor force) and the items become component parts of the equipment being developed.

The purchase of special tools, dies, jigs, and similar items is taxable when these items are purchased for use by an in-house machine shop to make special experimental equipment for a specific research project.

The purchase of small tools (such as pliers, wrenches, and screwdrivers) is exempt when these tools are purchased for use by the scientific and engineering staff directly and predominantly in research and development. For example, a tool that is used by a scientist to calibrate and adjust exempt laboratory equipment may be purchased without payment of sales tax if this is the predominant use of the tool.

Purchases of repair parts are exempt when the parts are used by the purchaser's own labor force to repair exempt machinery or equipment used in research and development. Examples of repair parts are vacuum tubes, transistors, diodes, replacement parts for vacuum pumps, and x-ray equipment.

If repairs are made by an outside vendor, the cost of the materials used is exempt if the cost is separately stated on the bill; however, the cost of labor for the service is subject to state and local sales tax. In addition, charges for installing, servicing, or maintaining exempt equipment are subject to state and local taxes.

Purchases of Packaging Materials

Purchases of tangible personal property such as gas cylinders, protective packaging materials (such as foam rubber), and similar items, are exempt when the items are used to protect materials from injury, contamination, shock, or other damage

while such materials are in the research facility or are being moved to another research facility for further research and development. The exemption does not apply if the items are used to protect materials while they are being transported after completion of the research and development operations.

**Purchases of Stationery
Supplies and Writing
Implements**

Purchases of stationery, pencils, pens, ink, scientific notebooks, logbooks, and similar supplies, are exempt when used **directly** and **predominantly** in recording qualifying research and development experiments by scientists, engineers, and technicians.

**Purchases of Printing
Supplies**

The cost of printing supplies used in producing scientific reports and articles by the research staff is exempt when these publications are printed in-house, and are used by the research staff in research and development.

**Purchases of Laboratory
Furniture**

If used **directly and predominantly** for qualifying research and development, the purchase of laboratory furniture such as desks, laboratory tables, stools, benches, sinks, and storage cabinets, is exempt. However, purchases of desks, typewriters and other office machinery or equipment used in administering research or development work are not exempt.

**Purchases of Technical
Books, Journals, Etc.**

Technical books and journals purchased for the scientific and engineering staff for use in qualifying research and development operations are exempt. However, the purchase of an information service that is subject to tax under Tax Law Section 1105 is not exempt.

**The Exemption Document
to Use**

An *Exempt Use Certificate*, Form ST-121, should be given to the vendor when making the tax-exempt purchases described in this section.

**Waste Treatment
Equipment**

The purchase of machinery and equipment qualifies for exemption from all state and local sales taxes when purchased by a manufacturer and used **directly** and **predominantly** in treating, burying, or storing waste materials, when over 50% of the waste results from the manufacturer's own production processes.

Waste treatment equipment includes the monitors and analyzers that are built into a system designed to prevent water or air pollution, and that are essential to the operation of the system.

Building materials which become part of a capital improvement used as a waste treatment facility are not eligible for the production exemption. (See Part IV for information on capital improvements.)

Examples of exempt equipment:

- dust collecting filters through which air is passed, used by a manufacturer whose production functions include grinding;
- waste treatment equipment at a manufacturing plant which treats both sanitary waste and effluent from an industrial process, where more than 50% of the waste being treated is a product or by-product of the production process;
- a mobile filter press designed to refine liquid industrial waste is used by a manufacturer to extract solids from the liquid waste created by the manufacturer's production process, and then pump the filtered water back into the production system; and
- an enclosed system used in a manufacturing plant to prevent the escape of particulate dust and gases that are generated in the course of melting down scrap steel used in the manufacturing process.

PART II - PURCHASES BY A MANUFACTURER

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.

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. Partial usage in administration or distribution phases will eliminate the machinery or equipment from qualifying for the production exemption, if the non-qualifying usage amounts to more than 50% of total usage.

For example, a computer used by a book publisher predominantly (that is, more than 50% of the time) to produce and edit manuscripts on magnetic tape would be eligible for the production exemption. If a computer performs similar editing operations, but is used predominantly to perform general office work, credit and collection, purchasing, or any other nonproduction activity, the computer would not be eligible for the production exemption.

Form ST-121, *Exempt Use Certificate*, should be used to claim the exemption from sales tax on the purchase of machinery and equipment used directly and predominantly in the production process.

On-Site Assembly of Production Machinery and Equipment

Charges for on-site assembly of exempt production machinery and equipment by the manufacturer of the machinery or equipment, or the manufacturer's subcontractor, are considered part of the selling price of the machinery or equipment in those instances where it is demonstrated that the machinery or equipment, by virtue of its size, weight, or other physical factors, could not be completely assembled before

delivery. Thus, such charges and are also eligible for exemption from sales tax.

On-site assembly is completed at the point where the machinery or equipment becomes a finished unit. Once assembly of the unit is completed, any further charges are considered to be charges for installing, maintaining, or servicing machinery and equipment. When the machinery or equipment is exempt production machinery and equipment, any additional installation charges are exempt from New York State sales and use taxes. If the on-site assembly is performed within New York City, the additional installation charges will be exempt from the local tax as well. If the on-site assembly is performed in any other locality (other than New York City), the additional installation charges will be subject to the applicable local sales or use tax. For more information, see the section on *Installing, Repairing, Maintaining, and Servicing Production Machinery and Equipment* beginning on page 16.

Example. Equipment is produced and assembled in a manufacturer's plant up to the point where further assembling would make transportation to the customer impossible. The unassembled equipment is then delivered to the customer's location where it is welded or bolted together by the manufacturer. This on-site assembly is a continuation of the manufacturing process, and any separately stated charge for such assembly is considered part of the selling price of the equipment, rather than a charge for its installation. Thus, if the equipment qualifies as exempt production equipment, the on-site assembly charge by the manufacturer is also exempt.

Rigging Services

A manufacturer may employ the services of a rigging company to perform tasks such as transporting, hoisting, and erecting qualifying production machinery and equipment at the manufacturer's plant site. The application of sales tax to various rigging charges appears below.

The following charges are exempt from state sales tax and from the sales tax imposed within New York City, but are subject to all other local sales taxes:

- original installation of equipment
- reinstallation

- erection of equipment
- re-erection of dismantled equipment, platforms, pedestals or buildings
- connection of equipment to outlets
- re-connection of equipment to outlets
- millwright services including leveling, aligning, setting, and putting equipment into operating condition

The above services are exempt from all state and local sales and use taxes if the services performed result in a capital improvement. (See Part IV for additional information on capital improvements.)

The following charges are not subject to any state or local sales taxes when the charge is separately stated on the invoice or other billing document:

- dismantling
- disconnecting
- hoisting and lowering
- loading and unloading
- skidding
- relocating equipment

A manufacturer may rent equipment for self use in performing rigging services. These equipment rentals are subject to state and local sales or use tax.

**Installing,
Repairing,
Maintaining and
Servicing
Production
Machinery and
Equipment**

Charges to install, repair, maintain, or service exempt production machinery and equipment are exempt from state sales and use taxes, and from the local tax imposed within New York City. However, such charges are subject to the applicable local sales or use tax when the services are delivered in a locality outside New York City.

Installation services include but are not limited to:

- attaching machinery or equipment to a building or mounting it on a foundation
- integrating new equipment into a production line
- connecting the wiring from main circuit panel to a machine
- connecting the plumbing from a boiler, power plant or other water supply to or within the equipment being installed

Reminder: Prior to September 1, 1996, New York City imposed a sales tax on the services of installing, repairing, maintaining, or servicing exempt production machinery, equipment, apparatus, parts, tools, and supplies. The City provides a refundable credit against the City's General Corporation Tax (GCT) and Unincorporated Business Tax (UBT), respectively, for the amount of City sales tax (plus interest) paid on such services. The credit is available only for those taxes and related interest paid on or after January 2, 1995 (although the payment may relate to a taxable transaction that took place before January 2, 1995).

**Plumbing Fixtures
and Electrical
Components Used in
the Installation of
Exempt Production
Machinery and
Equipment**

Plumbing fixtures, such as pipes and fittings used to construct pipelines for delivery of raw materials during the production process, are deemed to qualify for the production exemption.

All electrical parts actually attached to a piece of production machinery or equipment which qualifies for exemption, and the electrical wire from the qualifying production machinery and equipment to the power source (panel box), including any switches, are deemed to be part of the machinery and equipment. They are therefore eligible for the same exemption as the qualifying machinery and equipment. All other electrical components used prior to the power source are not used directly in production. They are therefore not eligible for the production exemption. The installation of these materials may, however, constitute a capital improvement to real property. The charge for installing tangible personal property that becomes a capital improvement to real property is not subject to sales or use tax. (See Part IV for additional information on capital improvements.)

**Gas, Electricity and
Other Energy
Sources**

Purchases of coal, gas, electricity, fuel oil, and other energy sources (other than motor fuel or diesel motor fuel which are discussed on page 19) qualify for exemption at the time of purchase if purchased for use **directly** and **exclusively** in the production process to:

- operate exempt production machinery or equipment;
- create conditions necessary for production; or
- perform an actual part of the production process.

These purchases are exempt from state sales and use taxes and local sales and use taxes (other than the local sales and use taxes imposed within New York City).

When gas, electricity, and other energy sources are used in both production and non-production activities, and are supplied from a common storage facility or through a common meter, an allocation must be made to determine the portion used **directly** and **exclusively** in production which can be purchased exempt from state sales and use taxes and local sales and use taxes (except the local sales and use taxes imposed within New York City).

For example, electricity metered through a single device may be used to run motors or machines which are used directly in production, which is an exempt usage, and also to provide lighting (including lighting for the work area) and operate office equipment, both of which are a taxable usage, thus requiring an allocation between the amount used for exempt purposes and the amount used for taxable purposes.

Likewise, gas used for producing steam which operates a turbine used directly in production is an exempt usage, but gas used in the general heating of plant and office space is a taxable usage. If the gas is stored in a single tank or metered through a single device, then an allocation must be made.

Similarly, refrigeration that is used to process food in a flash freezing plant is an exempt use, but refrigeration used to cool a storage area where the food ready for sale is held is a taxable use, and if the refrigeration is supplied from a common storage facility, its use must be allocated.

Once the exempt portion (percentage) has been established, it can be used to determine the exempt portion of purchases made in a given period. If variations in usage occur (for example, the addition or deletion of production or non-production equipment), the exempt percentage must be recomputed. Records must be maintained to account for the amount of energy used for each type of activity to substantiate how the exempt portion was determined.

Gas, electricity, coal, and other energy sources (other than motor fuel or diesel motor fuel) used directly and exclusively in production may be purchased without payment of sales tax by using Form ST-121, *Exempt Use Certificate*, or Form AU-297, *Direct Payment Permit*. In that case the user assumes full liability for the state and local taxes due on that portion

not used directly and exclusively in exempt production activities. As an alternative, the purchaser may pay tax on the entire energy bill, and apply for a refund or credit for sales tax paid on that portion of the energy source used directly and exclusively in production.

Appendix A contains information on how to determine the amount of electricity used in production.

Reminder: There is no exemption from the 4% local sales tax imposed in New York City on purchases of electricity or electric service, refrigeration, steam, and related services used or consumed in production. Taxpayers who have paid the 4% local tax imposed in New York City on electricity and electric services used in qualifying manufacturing, processing or assembling operations are entitled to claim a refundable credit, equal to the amount of the tax paid, against the City's General Corporation Tax (GCT) or Unincorporated Business Tax (UBT).

Motor Fuel

Motor fuel (such as gasoline or liquefied petroleum gas) may not be purchased tax exempt. A refund may be claimed for New York State and local sales tax (except the local sales tax imposed within New York City) 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*.

There is no exemption from the 4% local sales tax imposed in New York City on purchases of fuel used or consumed in production.

Diesel Motor Fuel

Enhanced diesel motor fuel (such as diesel fuel, enhanced No. 2 fuel oil, and No. 1 diesel fuel) may not be purchased tax exempt. If enhanced diesel motor fuel is used directly and exclusively in the production process, a refund of any state and local sales tax paid on the fuel, (except the local tax imposed within New York City), may be claimed by filing Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuels*.

Unenhanced diesel motor fuel (such as No. 2 fuel oil) and **residual petroleum products** (such as No. 4, 5 and 6 fuel oils and bunker C) may be purchased without payment of state and local sales tax (except the local sales tax imposed within New York City), by using Form FT-1012, *Manufacturing Certification for Certain Taxes Imposed on Diesel Motor Fuel and Residual Petroleum Product*. Residual petroleum products may also be purchased tax exempt by using Form ST-121, *Exempt Use Certificate*. Form ST-121 may not be used to *purchase* motor fuel or diesel motor fuel.

There is no exemption from the 4% local sales tax imposed in New York City on purchases of fuel used or consumed in production.

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.

A part is any component or attachment of a piece of machinery or equipment that is actually attached to the machinery or equipment, and used in connection with the performance of its functions. The component or attachment must be necessary to the operation of the machinery or equipment to qualify as a part. By definition, a part cannot accomplish the work for which it was designed independent of the machinery or equipment for which it is intended to be a component. Examples are:

- a new electric motor for a lathe
- a replacement blade for a bench saw that is used in the manufacturing of furniture
- a buttonhole attachment for a sewing machine used to produce clothing for sale
- a standardized computer program installed in a computer that is used to run exempt production machinery or equipment

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. The tool must be

necessary to, and used within, the production process. Examples of qualifying tools are tools used to attach and detach parts (like molds or forms) of production machinery and equipment, and tools actually used in production (such as an electric saw and electric drill used predominantly to process wood that is used to make furniture for sale).

The purchase of tools used in the general maintenance, repair, or servicing of production machinery and equipment is subject to tax, because the tools are not used directly and predominantly in production.

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.

For example, oil and lubricating grease used to maintain exempt production machinery is used directly and predominantly in production.

Where a detectable amount of the supply remains with the finished product, the supply may be purchased for resale as a component. For example, a solvent or thinner used by a furniture manufacturer may be purchased for resale providing a trace element of the solvent or thinner remains with the furniture produced for sale.

The purchase of other supplies is also exempt when the supplies are used directly and predominantly in the production process. For example, charts used in instruments that record and control the flow of chemicals that are combined during the manufacture of chemical compounds are considered to be production supplies, and can be purchased exempt.

Cartons, Containers, and 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 of items which are exempt when transferred with the product to the purchaser are:

Bags	Glue
Barrels	Gummed labels
Binding	Gummed tape
Bottles (including deposit bottles)	Kegs
Boxes	Lumber used for blocking
Cans	Pallets
Carboys	Reels
Cartons	Sacks
Cellophane	Spools
Coatings and other preservative materials	Staples
Cores	Strapping
Crates	String
Cylinders	Tape
Drums	Twine
Excelsior	Wrapping paper

Use Form ST-121, *Exempt Use Certificate*, to claim the exemption for these materials.

The purchase of packing or packaging material which is not transferred to the purchaser with a product is subject to sales or use taxes in all localities (at the combined state and local rates). The materials are taxable regardless of the taxability of the items being packed or packaged, and regardless of whether the items, when sold, are shipped outside of New York State.

Examples of taxable items are:

- returnable cartons and pallets; and
- racks, trays or similar devices used to facilitate delivery of the product when the ownership of these items is not transferred with the product to the purchaser.

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.

Therefore, labels that contain size, care instructions, and information useful to the final customer, and that are permanently attached to the product to be sold, may be purchased for resale.

Likewise, tags and labels that identify, describe or provide information about the product, or that provide the name, address, or telephone number of the producer or manufacturer of the product, are considered to be a critical element of the product and may be purchased for resale whether or not such tags or labels are permanently affixed to the product.

However, price, size, style, lot number, and inspection tickets and tags which are used by the manufacturer to provide information about the product to a potential customer, and which are not permanently attached to the product, and do not serve a useful purpose to the customer after the point of the retail sale, may not be purchased for resale.

Labels and tags may sometimes constitute packaging material and, as such, they may also be purchased for resale. Examples of labels used in packaging a product are adhesive address labels and warning stickers that carry instructions such as "FRAGILE - HANDLE WITH CARE."

Form ST-121, *Resale Certificate*, should be used to make a purchase for resale without payment of sales tax.

Palletizer System Used in Production

A palletizer system consists of a pallet loader (palletizer), which is the machinery that automatically arranges cases into layers and stacks them on pallets, and the conveyor system, which feeds the cased products into the palletizer.

When a manufacturer sells products by the pallet load and the finished products are labeled, packaged, and palletized before either immediate shipment or storage pending shipment, the palletizing system qualifies as production equipment used **directly** and **predominantly** in production. The system

would therefore be exempt from all state and local sales and use taxes. Using the palletizer system to prepare mixed pallets (pallets containing cases of more than one product) will not affect the exempt status of the palletizer providing that the pallet load remains the unit of sale. An interruption in the production cycle of work in process before final packaging of the goods does not affect the exempt status of the palletizer.

Example. A manufacturer who supplies private label products to retailers processes the product through the point where it is placed in unlabeled cans or jars. The product is temporarily removed from production, pending a customer's order. When the order is received, the product is returned to the production stream where the appropriate brand labels are applied to the containers. The product proceeds through the casing operation directly to the pallet loader, where it is palletized for sale. This palletizer qualifies for the production exemption.

If completed cased products (labeled and sealed) are stored awaiting customer's orders and then palletized to fill the orders, palletizers so used will be considered part of the distribution operation and not eligible for exemption.

Example. A manufacturer or processor completes the labeling of a product, packages it into cartons, and stores the cartons. Later, the cartons are palletized for distribution. The palletizer is not eligible for exemption.

Palletizers that are not part of the production line (that is they are used to store or distribute a finished product), are not exempt from sales or use tax. Examples are a palletizer used in a warehouse area by a manufacturer, or one used by a wholesaler for the shipment of goods.

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. Where the quality control functions are performed is immaterial. The quality control facilities may be located within the production area or in a separate laboratory. Supplies used in quality control of the manufactured product while the product is still on the production line are also exempt.

The exemption does not apply to machinery and equipment used to test the manufactured product after it is finished and ready for sale, or to test raw materials before they are stored.

Safety Apparel and Safety 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. An *Exempt Use Certificate*, Form ST-121, may be issued by the manufacturer to the supplier for the tax-exempt purchase of these items. If a manufacturer sells the safety apparel and supplies to its employees, the manufacturer should issue a *Resale Certificate*, Form ST-120, to the supplier for purchases of these items. Both state and local taxes must be collected when the manufacturer sells the safety apparel or supplies to its employees.

Storage and Demurrage Charges

When a vendor charges a customer for leaving tangible personal property on the vendor's premises beyond a stipulated period of time, the charge is considered a charge for storage. Charges for the storage of goods in process or of property held for sale in the regular course of business are not taxable. Charges for the storage of other goods are subject to state and local sales tax. The designation of the charge as a penalty, late fee, or demurrage does not affect its taxable status.

When a customer retains a vendor's tangible personal property beyond a stipulated period of time, the charge made by the vendor to the customer for not returning the property on time is considered a charge for the rental of tangible personal property, and is subject to state and local sales tax.

Food Processing Equipment

Machinery or equipment used **directly** and **predominantly** in the manufacturing or processing (such as cutting, slicing, grinding, freezing, or packaging) of food for sale qualifies for the production exemption, including the exemption provided within New York City.

Machinery and equipment used in a similar manner does not

qualify for the production exemption when used by restaurants, taverns, and like establishments in the preparation of food and drink subject to tax under Section 1105(d) of the Tax Law. Machinery or equipment used by these establishments is not considered to be used in the processing of tangible personal property for sale.

Machinery or equipment used to provide cold storage facilities for frozen food is not exempt, even though the food will subsequently be sold.

See Appendix B for a listing of taxable and exempt meat processing equipment.

Process Piping

Process piping used in production is eligible for exemption from both state and local sales and use taxes as machinery and equipment, if it is used **directly** and **predominantly** in the production process, or in the treatment of waste generated by the production process. Installation of process piping may constitute a capital improvement, an installation of tangible personal property, or a combination of the two. Charges for the service of installing exempt process piping, where the installation is not a capital improvement to real property, are exempt from state sales and use taxes, and from the local tax imposed within New York City. These charges are subject to all other local sales and use taxes.

Foundry Equipment

Mold and core making machines used in a foundry operation are eligible for the production exemption for machinery and equipment if they are used **directly** and **predominantly** in the production process. The purchase of core boxes, master patterns and match plates are also exempt from all state and local sales and use taxes, if they are attached to exempt machinery or equipment.

Supplies used in connection with exempt mold and core making machinery (such as sand and resin-treated sand), are exempt from state and local sales and use taxes.

The purchase of pre-manufactured cores that are attached to exempt machinery or equipment is also considered a purchase of exempt machine parts and is exempt from all state and local sales and use taxes.

PART III - SALES BY A MANUFACTURER

Tangible Personal Property

All sales of tangible personal property made by a manufacturer are subject to New York State and local sales and use taxes unless:

- the purchaser provides the manufacturer with a properly completed exemption document;
- the product being sold is, by its nature, specifically exempt from tax (such as exempt drugs or medicines) and exemption documents are not required; or
- the product is delivered to the purchaser outside of New York State.

A manufacturer's sales include sales of:

- inventory to wholesalers or retailers;
- inventory at a sales outlet or company store to employees, or directly to the public;
- hangers and plastic wrap;
- tickets, tags, and labels attached to the product for the retailer's benefit;
- display racks to wholesalers or retailers;
- dies; and
- box forming machines

All sales must be reported on the sales and use tax return filed for the period during which the sales occurred. Any sales taxes due on the sales must be remitted with that return.

Bulk Sales

A bulk sale is any sale, transfer, or assignment in bulk of any part or the whole of a business' assets, other than in the ordinary course of business. The phrase 'ordinary course of business' means any function, operation or transaction which is done ordinarily or customarily in the course of business.

For example, if obsolete machinery is sold and replaced with new machinery, the transaction is in the ordinary course of business and is not a bulk sale. If, on the other hand, machinery or equipment is sold as part of the liquidation of a business, then the sale would be considered a bulk sale

because it is not in the ordinary course of business.

Thus, when a manufacturer sells obsolete equipment, vehicles, scrap molds, parts, office equipment, and similar property, all the facts and circumstances surrounding the transaction will become a part of the determination of whether the sale is considered a bulk sale for sales tax purposes.

When a bulk sale occurs, the manufacturer should provide each prospective purchaser with a copy of Form TP-153, *Notice to Prospective Purchasers of a Business or Business Assets*.

These sales are taxable unless the purchaser furnishes an exemption document, or the item being purchased is exempt from tax. In addition, the purchaser is required to notify the Tax Department of the purchase by filing Form AU-196.10, *Notification of Sale, Transfer or Assignment in Bulk*.

See Part 537 of the Sales and Use Tax Regulations for additional information.

PART IV - INSTALLATIONS OF MACHINERY & EQUIPMENT TREATED AS A CAPITAL IMPROVEMENT

Installations of Machinery and Equipment That Meet the Criteria of a Capital Improvement

When machinery or equipment, as installed, constitutes a capital improvement to real property, the cost of the installation is exempt from all state and local sales taxes. A capital improvement is an addition or alteration to real property which meets all three of the following conditions:

- 1) it substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and
- 2) it becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the real property or the article itself; and
- 3) it is intended to become a permanent installation.

If the installation of exempt machinery and equipment meets the above criteria and the machinery and equipment will be classified as real property after it is installed, the manufacturer should give the contractor Form ST-124, *Certificate of Capital Improvement*. If the contractor is both purchasing and installing the machinery or equipment, the manufacturer should give the contractor both a *Certificate of Capital Improvement* and Form ST-121, *Exempt Use Certificate*. The contractor should, in turn, furnish the supplier of the machinery and equipment with Form ST-120.1, *Contractor Exempt Purchase Certificate*, which enables the contractor to purchase the machinery or equipment without paying any sales tax on the purchase.

To qualify as machinery or equipment, the tangible personal property must have the character of machinery or equipment prior to installation. Therefore, a concrete foundation, even one on which a piece of machinery or equipment is placed, is not machinery or equipment, and the contractor must pay both state and local sales or use tax on the materials used to construct the concrete foundation.

PART V - MISCELLANEOUS ACTIVITIES

Tangible Personal Property Manufactured, Processed, or Assembled by the User

A compensating use tax is imposed on the use of any tangible personal property which was manufactured by the user and used in the manufacturer's own operations in a taxable manner. The amount on which the use tax is computed depends on whether or not the user offers items of the same kind for sale in the regular course of business.

Where the user of a product sells items of the same kind in the regular course of business, the basis of tax on the use of products which are manufactured, processed, or assembled by the user is the price at which such items are sold, as evidenced by a price list, catalog price, or record of sales. In the absence of a catalog price or price list, the average of the prices charged various customers will be deemed the price at which the user sells the items in the regular course of business. The use tax would be computed on this amount.

If the user does not offer items of the same kind for sale in the regular course of business, the basis of tax is the amount paid for the materials manufactured, processed, or assembled into the items that are used. Costs incurred for delivery of the materials must be included in the base on which the use tax is computed.

Items of the same kind means that the items belong to an identifiable class, but need not be identical.

Example. Windows are items of the same kind when they are a standard size and manufactured of similar materials, whether or not they are sold from inventory or produced to order from a catalog description. A manufacturer of windows produces, from a catalog description, square, round, and hexagon shaped windows from various materials. The windows, regardless of shape, size, or materials, are considered to be items of the same kind.

When items which are not standard or catalogued are made to the specifications of a particular job, they will not be considered items of the same kind as catalog or inventory items.

Items made to the specifications of a particular job will not be considered items of the same kind as items made to the specifications of other jobs.

Offered for sale in the regular course of business means that a business, during each 12 month period beginning December 1st, sells more than 10% of its product to persons other than organizations which are exempt under Section 1116(a) of the Tax Law. For purposes of calculating whether the “more than 10%” criteria is met, the amount sold should be measured by weight, volume, size, or other unit on which the selling price is based. The percentage is based on a fraction. The numerator is the total amount of product sold, minus the amount sold to exempt organizations. The denominator is the total amount of product sold and product used in performing work for others, minus the amount of products sold to, or used in performing work for, exempt organizations. This is illustrated by the following formula:

$$\frac{\text{Total amount sold, minus amount sold to exempt organizations}}{\text{Total amount sold and used, minus the sum of: the amount sold to, plus the amount used for, exempt organizations}}$$

Manufacturers as Contractors

Manufacturing is the production of tangible personal property that is substantially different in form, character, composition, and usefulness from its components. Manufacturing includes the production of standardized items as well as the production of items to a customer’s specifications.

When a manufacturer installs a standard manufactured item, and the installation meets the criteria of a capital improvement, the computation of the use tax due on the item is based on the normal selling price of the product (that is, the price at which the item is offered for sale by the manufacturer in the ordinary course of business).

When a standard manufactured product has been altered or modified by the manufacturer, and is installed by the manufacturer as a capital improvement, a use tax is owed by the manufacturer based on the normal selling price of the standard manufactured product exclusive of the cost of the alterations or modifications.

As discussed in Part II of this publication, the purchase of machinery and equipment which is used **directly** and **predominantly** in the production process is exempt from all New York State and local sales and use taxes. Note, however, that the purchase of the machinery and equipment is not exempt if 50% or less of the tangible personal property produced is offered for sale by the manufacturer/contractor. Property installed as a capital improvement by the manufacturer/contractor is not considered to be property produced for sale.

Example. A manufacturer/contractor produces kitchen cabinets. Only 30% of the product is sold to others uninstalled; the balance is installed by the manufacturer in capital improvement projects. Since more than 50% of the product is not offered for sale, the purchase of the machinery and equipment used to produce the cabinets does not qualify for the production exemption.

Property Donated to an Exempt Organization

Donations of tangible personal property by a manufacturer, processor, or assembler to certain exempt organizations qualify for exemption from state and local use taxes, provided the following conditions are met:

- the donor is the manufacturer, processor, or assembler of the donated property;
- the donor offers the same kind of tangible personal property for sale in the regular course of business; and
- the donor does not make any other use of the property before it is donated.

Qualifying donations to the following exempt organizations are not subject to tax:

- the State of New York or any of its agencies, instrumentalities, public corporations (including a public corporation created under an agreement or compact with another state or Canada), or political subdivisions;
- the United States of America, and any of its agencies and instrumentalities;
- the United Nations or any international organization of which the United States of America is a member;
- a qualifying corporation, association, trust, or community chest, fund, or foundation that is organized and operated exclusively for religious,

charitable, or scientific purposes, or for purposes of testing for public safety, or for literary or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals;

- posts and organizations consisting of past or present members of the Armed Forces of the United States;
- certain Indian nations or tribes located in New York State;
- not-for-profit corporations operating as health maintenance organizations subject to the provisions of Article 44 of the Public Health Law; and
- rural electric cooperatives.

Filing for a Refund or Credit

If sales or use tax is paid on tangible personal property or services that qualify for exemption, an application for refund or credit of those taxes may be filed. When applying for a refund or credit, certain information and substantiating documentation must be provided.

For example, if sales tax is paid on 100% of the electricity purchased by a manufacturer, but the manufacturer used some of the electricity directly and exclusively in the production process, the manufacturer can apply for a refund of the tax paid on the exempt portion of the electricity. To substantiate the allocations made for use of electricity, the manufacturer must submit an electrical engineer survey, or the manufacturer's own survey.

The formula found in Appendix A may be used by a manufacturer to allocate the use of electricity between qualifying and non-qualifying activities.

Claims for refund may be filed on Form AU-I I, *Application for Credit or Refund of State and Local Sales or Use Tax*. Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuels*, should be filed to request a refund of sales tax paid on motor fuel or diesel motor fuel.

PART VI - CHART A

GENERAL SUMMARY OF THE PRODUCTION EXEMPTION

Exemption apply only for production of product for sale.

	New York State		Local (excluding New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
Machinery or equipment used directly and predominantly in the production process		x		x		x
Machinery parts used directly and predominantly in production		x		x		x
Tools (hand tools) and supplies used directly and predominantly in production		x		x		x
Ingredients or components (raw materials) which become part of product		x		x		x
Supplies used directly and predominantly in production		x		x		x
Services of installing, repairing, maintaining, or servicing machinery and equipment used directly and predominantly in production		x	x			x
Services of installing, repairing, maintaining or servicing parts, tools, and supplies used with exempt production machinery and equipment		x	x			x
Fuel and utility services used directly and exclusively in production		x		x	x	
General maintenance, heating, and illumination of plant and office building	x		x		x	

PART VII - CHART B

EXAMPLES OF TAXABLE AND EXEMPT PURCHASES BY A MANUFACTURER

Unless otherwise indicated, purchases of tangible personal property (such as machinery, equipment, parts and supplies) and charges for on-site assembly qualify for the production exemption only if the property purchased is used **directly** and **predominantly** in the production process. Purchases of fuel, gas, electricity, refrigeration, and steam, and gas, electric, refrigeration, and steam services qualify for the production exemption only if used **directly** and **exclusively** in the production process.

	New York State		Local (excluding) New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
Machinery and Equipment						
Machinery and equipment purchased or leased for use directly and predominantly in production		x		x		x
Electronic equipment used directly and predominantly in production		x		x		x
Work tables used directly and predominantly in production		x		x		x
Machinery and equipment used to produce exempt production machinery and equipment		x		x		x
Fork lifts and cranes used directly and predominantly in production		x		x		x
Parts when installed on machinery and equipment used directly and predominantly in production		x		x		x
Power tools, such as electric drill presses or table saws, used directly and predominantly in production		x		x		x
Hand tools (such as hand saws and wrenches) used directly and predominantly in production		x		x		x

	New York State		Local (excluding) New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
Machinery and equipment used for general heating, lighting, ventilation, and air condition of plants and offices	x		x		x	
Air conditioning and ventilation equipment used directly and predominantly to create conditions necessary for production		x		x		x
Conveyors used directly and predominantly in production		x		x		x
Conveyors used to move finished products to and within storage and shipping areas	x		x		x	
Palletizer system used directly and predominantly in:						
a. Production		x		x		x
b. Distribution	x		x		x	
Meat Processing Equipment						
See Appendix B						
Process Piping						
Distributing ingredients or raw materials		x		x		x
Distributing supply materials	x		x		x	
For treatment of waste generated by the production process		x		x		x

	New York State		Local (excluding New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
	Quality Control					
Machinery and equipment for production line testing of goods in process		X		X		X
Machinery and equipment for testing finished product	X		X		X	
Production Supplies						
Supplies used or consumed directly and predominantly in the production process, in connection with exempt machinery, or qualifying quality control (such as wiping cloths and sandpaper)		X		X		X
Oil and grease for use in or on exempt production machinery and equipment		X		X		X
Charts maintained for recording maintenance schedules, machine efficiency, and similar information relating to exempt production machinery and equipment	X		X		X	
Charts used to record and control the flow of materials through the manufacturing process, such as a chart produced by an orifice meter that records the pressure and volume of gas flowing through the meters		X		X		X
Chemicals and catalysts used directly and predominantly in production, not components of the finished product		X		X		X

	New York State		Local (excluding New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
Safety apparel (such as glasses and shoes) furnished without charge by the manufacturer to its employees for use in the production process		X		X		X
Ingredients, components, raw materials, chemicals, and so forth, which become an element of the finished product		X		X		X
Utilities and Fuel						
Electricity, gas, fuel oil, propane, steam, and other fuels consumed directly and exclusively to power production equipment, including blasting agents and explosives used directly and exclusively in production		X		X	X	
Electricity, gas, fuel oil, propane, steam, and so forth, used in the heating, lighting, or air conditioning of production and nonproduction areas and offices	X		X		X	
Waste-Treatment Equipment						
Equipment purchased by a manufacturer for use directly and predominantly in treating waste resulting from the production process		X		X		X
Equipment used to contain or recover oil spills	X		X		X	
Chemicals used in conjunction with qualifying waste-treatment equipment		X		X		X

	New York State		Local (excluding New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
Alarm devices that are not an integral component part of the waste-treatment equipment	X		X		X	
Building materials for constructing waste-treatment plants	X		X		X	
Ventilation equipment used to remove polluted air from the production area		X		X		X
Outside Labor Services						
Labor to install or repair production machinery or equipment		X	X			X
On-site assembly of qualifying production machinery and equipment		X		X		X
Capital improvement to buildings and land		X		X		X
Labor to install machinery and equipment which constitutes a capital improvement		X		X		X
Plant guard and security services	X		X		X	
Trash removal, snow removal, repair, and maintenance of building and land	X		X		X	
Rigging Services Performed on Production Equipment						
Installations, connections, erections, and the like		X	X			X

	New York State		Local (excluding) New York City		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
	Dismantling, disconnecting, transporting, etc., if charges are separately stated on invoice		X		X	
Research and Development (R&D)						
Laboratory equipment such as Bunsen burners, flasks, and microscopes, used directly and predominantly in R&D		X		X		X
Parts for Machinery and equipment used directly and predominantly in R&D		X		X		X
Utilities						
1. Power used directly and exclusively for qualifying R&D machinery and equipment		X		X		X
2. Power used directly and exclusively to heat or air condition a room or rooms for the proper conduct, operation, or maintenance of research and development machinery and equipment, or activities		X		X		X
3. General lighting and heating	X		X		X	
4. Intrastate telephone service	X		X		X	

	New York State		Local (excluding) New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
	5. Power to heat or air condition a plant where research and development is conducted	x		x		x
6. Special lighting for a qualifying research and development project		x		x		x
Maintenance supplies such as brooms and light bulbs	x		x		x	
Labor to install or repair research and development machinery or equipment	x		x		x	
Tangible personal property used directly and predominantly for the development of new equipment for more efficient production of existing product		x		x		x
Technical journals for R&D purposes		x		x		x
Laboratory furniture used directly and predominantly in research and development		x		x		x
Furniture used for clerical purposes	x		x		x	
Test equipment to monitor new machinery and equipment used directly and predominantly in R&D		x		x		x
Building materials for construction in R&D areas (such as partitions and enclosures)	x		x		x	

	New York State		Local (excluding) New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
	Containers, Labels, and Packing Materials					
Returnable containers such as barrels, drums, and acid carboys, owned by a manufacturer	X		X		X	
Racks, trays, and the like, not transferred with product	X		X		X	
Protective coverings (such as tarpaulins) not transferred with product	X		X		X	
Pallets (unreturnable) used to ship manufactured product		X		X		X
Product instruction inserts		X		X		X
Instruction inserts containing advertisements for other products	X		X		X	
Labels and nameplates to be permanently attached to product		X		X		X
Tickets and tags containing information such as size, style, lot number, inspection, list price, and similar manufacturer's data, not permanently attached to the product	X		X		X	
Tickets and tags containing information such as contents, size, care instructions, etc. that are permanently attached to the product		X		X		X
Bags, wrapping paper, twine, bands, and labels, used to package finished products for sale to others and transferred with the product		X		X		X

	New York State		Local (excluding) New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
Administrative Supplies						
Office supplies including invoices, purchase orders, and envelopes	x		x		x	
Miscellaneous Expenses						
Office furniture	x		x		x	
Building repairs and maintenance	x		x		x	
Samples purchased	x		x		x	
Transportation and delivery vehicles other than exempt tractors, trailers, and semitrailers	x		x		x	
Tractors, trailers, and semitrailers used in combination where the gross vehicle weight exceeds 26,000 lbs.		x		x		x
Commercial aircraft primarily used by a manufacturer to transport its goods in intrastate, interstate or foreign commerce		x		x		x
Commercial vessels primarily used by a manufacturer to transport its goods in interstate or foreign commerce		x		x		x

APPENDIX A

Determining Electricity Used in Production

The formula shown below has been developed for use in determining the exempt amount of electricity used in production. (No formulas have been prepared for other utility services.) To determine the portion of purchases of electricity qualifying for exemption from sales tax, calculate the ratio of kilowatt-hours of exempt use to total kilowatt-hours of use. Then apply this ratio to electricity purchases to determine the amount qualifying for exemption.

$$\frac{\text{kilowatt-hours exempt use per month}}{\text{kilowatt-hours for month}} = \text{proportion of purchases qualifying for exemption}$$

When determining monthly hours of operation for the formula above, keep in mind variations in use throughout the year. Add the approximate hours of use for each month of the year and divide the results by 12.

$$\frac{\text{total hours per year}}{12} = \text{average hours per month}$$

Calculating Kilowatts per Hour of Operation

Motors

Horsepower known:

Multiply the number of horsepower by 746 and divide by 1,000 to determine approximate kilowatts used per hour of operation.

$$\frac{\text{horsepower} \times 746}{1,000} = \text{kilowatts per hour}$$

Horsepower not known:

Multiply volts by amperes indicated on manufacturer's nameplate and divide by 1,000 to determine approximate kilowatts used per hour of operation.

$$\frac{\text{volts} \times \text{amperes}}{1,000} = \text{kilowatts per hour}$$

Lights

For incandescent bulbs, add rated wattage and divide by 1,000. For fluorescent lights, add rated wattage plus an additional 20% of rated wattage (for energy used by lamp ballasts), then divide by 1,000.

$$\text{Incandescent lights:} \quad \frac{\text{watts}}{1,000} = \text{kilowatts per hour}$$

$$\text{Fluorescent lights:} \quad \frac{\text{watts} + .20 (\text{watts})}{1,000} = \text{kilowatts per hour}$$

Devices Other Than Motors or Lights

For these devices, divide rated wattage by 1,000 to obtain approximate kilowatts used per hour of operation.

$$\frac{\text{watts}}{1,000} = \text{kilowatts per hour}$$

APPENDIX B

Meat Processing Machinery and Equipment

Listed below are examples of taxable and exempt machinery, equipment, replacement parts, tools, and supplies used in meat processing operations (that is, meat processing plants, butcher shops, or meat departments in supermarkets). The items listed as exempt are exempt only when they are used directly and predominantly to produce meat or meat products for sale. Equipment used by restaurants, taverns, and similar establishments to prepare meals does not qualify for the production exemption.

	New York State		Local (excluding) New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
	Power meat saws, cubers, grinders, slicers		x		x	
Sausage stuffers, hamburger patty machines		x		x		x
Tenderizers (power)		x		x		x
Scales (used to weigh processed meat for labeling)		x		x		x
Scales (used to weigh incoming meat)	x		x		x	
Hot water heaters	x		x		x	
Sinks	x		x		x	
Wrapping systems		x		x		x
Wrapping supplies		x		x		x
Platters used in production line		x		x		x
Platters used to display the product for sale	x		x		x	
Conveyors (not used in the production line)	x		x		x	

	New York State		Local (excluding New York City)		New York City	
	Taxable	Exempt	Taxable	Exempt	Taxable	Exempt
	Tramrail (used for receiving meat for weighing, inspecting, measuring, or testing)	x		x		x
Tramrail (used for receiving meat to be placed directly into storage)		x		x		x
Carts used to move meat along production line		x		x		x
Carts not used in the production line	x		x		x	
Stock trucks	x		x		x	
Tubs (used to hold meat during processing)		x		x		x
Coolers and freezers used in production		x		x		x
Freezers and coolers for storage of finished product	x		x		x	
Machinery or equipment parts		x		x		x
Hand meat saws, knives, and other hand tools		x		x		x
Supplies used with exempt machinery or equipment		x		x		x
Installing, repairing, maintaining, or servicing machinery or equipment used directly and predominantly in production		x	x			x

APPENDIX C

Legislative History

Beginning in 1965, machinery and equipment (including parts with a useful life of more than one year) used directly and exclusively in production were exempted from New York State sales and use taxes. All tangible personal property used or consumed in production was exempt from all local taxes (except the local tax imposed in New York City, which had no production exemption). Parts with a useful life of less than one year, tools, and supplies used in production were subject to New York State sales tax and the local sales tax imposed by New York City on sales made within New York City. Subsequent to the original enactment of the law sections which provided for exemptions from tax for property used or consumed in a qualifying production process, the so-called “production exemption” was amended. These amendments are discussed below.

<u>Effective Date</u>	<u>Law Section</u>	<u>Amendment</u>
September 1, 1974	1115(a)(12)	Changed the requirement that machinery and equipment be used exclusively in the production of tangible property or goods for sale to qualify for the exemption from taxation. Effective September 1, 1974, the purchase of machinery and equipment qualifies for exemption if the machinery and equipment is to be used “predominantly” (more than 50% of the time) in such production. (Chapter 851, Laws of 1974)
July 11, 1979	1105-B	Except for the local portion of the tax imposed on deliveries made in New York City, this amendment reduced the rate of tax to 2% for the period September 1, 1980 to February 28, 1981, and exempted from tax effective March 1, 1981 purchases of: parts with a useful life of one year or less, tools, and supplies for use or consumption directly and predominantly in the production of goods and property for sale; and the charge for the services of installing, repairing, maintaining, or servicing production machinery and equipment and parts, tools, and supplies for use or consumption directly and predominantly in the production process. (Chapter 625, Laws of 1979)

Legislative History Continued

<u>Effective Date</u>	<u>Law Section</u>	<u>Amendment</u>
August 26, 1981	1115(a)12	Granted an exemption for “all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas, and solution mining activities to the point of sale to the first commercial purchaser”. (Chapter 846, Laws of 1981)
July 1, 1984	11-503(g) of the Administrative Code of the City of New York	Provided a refundable credit against the New York City Unincorporated Business Income Tax equal to the amount of New York City sales or compensating use taxes paid on purchases or uses of electricity or electric service used or consumed directly and exclusively in the production of tangible personal property for sale by manufacturing, processing or assembling. Effective for taxes due on or after, and paid on or after, July 1, 1984. (Chapter 907, Laws of 1985)
July 1, 1984	11-604.15(a)(1) of the Administrative Code of the City of New York	Provided a refundable credit against the General Corporation Tax equal to the amount of New York City sales or compensating use taxes paid on purchases or uses of electricity or electric service used or consumed directly and exclusively in the production of tangible personal property for sale by manufacturing, processing or assembling. Effective for taxes due on or after, and paid on or after, July 1, 1984. (Chapter 907, Laws of 1985)
June 1, 1989	1110	Provided that use tax is due on property used as such or incorporated into a structure, building, or real property, located in New York State, by a contractor, subcontractor or repairman, even though items of the same kind are not offered for sale by the user in the user’s regular course of business. (Chapter 61, Laws of 1989)

Legislative History Continued

<u>Effective Date</u>	<u>Law Section</u>	<u>Amendment</u>
December 1, 1989	1107	Provided an exemption from local tax imposed by New York City on the purchase of production machinery and equipment only. The exemption does not extent to purchases of parts with a useful life of one year or less, tools and supplies, or to utilities and utility services. (Chapter 376, Laws of 1989)
January 2, 1995	11-503(k) of the Administrative Code of the City of New York	Provided a refundable credit against the City of New York's Unincorporated Business Income Tax equal to the amount of New York City sales or use tax paid on the purchase of the services of installing, repairing, maintaining, or servicing machinery or equipment, parts, tools and supplies used or consumed directly and predominantly in the production process. (Chapter 489, Laws of 1995)
January 2, 1995	11-604.17-a of the Administrative Code of the City of New York	Provided a refundable credit against the City of New York's General Corporation Tax equal to the amount of New York City sales or use tax paid on the purchase of the services of installing, repairing, maintaining, or servicing machinery or equipment, parts, tools and supplies used or consumed directly and predominantly in the production process. (Chapter 489, Laws of 1995)
December 1, 1996	1105-B	Exempts from the 4% local sales or use tax imposed within New York City the purchase of parts with a useful life of one year or less, tools or supplies for use or consumption directly and predominantly in the production process; parts with a useful life of one year or less, tools or supplies for use directly and predominantly in or on exempt telephone central office equipment or station apparatus, or comparable telegraph equipment; and the services of installing, repairing, maintaining, or servicing exempt machinery, equipment, apparatus, parts, tools, and supplies. (Chapter 366, Laws of 1996)

APPENDIX D - GLOSSARY OF TERMS

The following definitions apply for purposes of the exemptions discussed in this publication.

Administration	Includes activities such as sales promotion, general office work, credit and collection, purchasing, general maintenance, transporting, receiving, and testing of raw materials, and clerical work in production such as preparation of work production and time records.
Assembling	Coupling or uniting of parts or materials as a manufacturing process or as a step in a manufacturing process which results in a new product.
Catalyst	A substance that speeds up or slows down the rate of a chemical reaction but does not itself undergo any permanent chemical change in the process.
Component	Any type of material, including chemicals and catalysts, which becomes an element of the final product for sale, even if only a small portion remains with the finished product.
Directly	<p>Machinery or equipment is used directly in production when it:</p> <ul style="list-style-type: none">• acts upon or causes a change in material to form the product to be sold; or• has an active causal relationship in the production of the product to be sold; or• is used in the handling, storage, or conveyance of materials during the production process; or• is used to place the product to be sold in the package in which it will enter the stream of commerce. <p>To be used directly in production, fuel, gas, electricity, refrigeration, or steam and gas, electric, refrigeration, or steam services must, during the production phase of a process:</p> <ul style="list-style-type: none">• be used to operate exempt production machinery or equipment; or• create conditions necessary for production; or• be used to perform an actual part of the production process. <p>Use in activities collateral to the production process is not direct use in production.</p>
Distribution	Includes all operations after production, such as storing, displaying, selling, loading, and shipping finished products.
Equipment	An item used that has properties of repetitive utility and which maintains its form and characteristics during and after use, although subject to wear and deterioration.
Exclusively	Totally, or 100%. The term generally applies to use of gas, electricity, refrigeration, and steam, and gas, electric, refrigeration and steam services.
Machinery	A mechanical, electrical, or electronic device. Includes all devices required to control,

regulate, or operate a piece of machinery, provided the devices are directly connected to or are an integral part of the machinery.

Part	A replacement for any portion of a piece of machinery or equipment, and any device actually attached to the machinery or equipment and used in connection with the performance of its function.
Predominantly	More than 50%. For example, a piece of equipment that is generally in operation 12 hours a day is used in the production process for 9 hours a day (or 75% of the time), and is used for other purposes 3 hours a day (or 25% of the time). The equipment is used predominantly in production since it is used more than 50% of the time in the production process.
Processing	An operation that changes the nature, shape, or form of tangible personal property.
Production	The process by which products are created using one or more of the following operations: manufacturing; processing; fabricating; generating; assembling; refining; mining; or extracting.
Quality Control	Routine on-line or off-line inspection, monitoring, or testing of a product.
Raw Material	Any substance or material, whether crude or processed, that can be converted by a production process into a new product.
Research and Development	Experimental or laboratory research for developing new or better products, finding new uses for existing products, or advancing technology.
Supply	An item of tangible personal property which is used to maintain machinery or equipment; or an expendable item of tangible personal property that is used or consumed in the production process. A supply item which becomes a detectable element of the finished product for sale (such as a chemical) is treated as a component. See Component on page 47.
Tool	A manually operated implement for performing a task, such as a tool used by carpenters and machinists; does not include parts, attachments, or devices that are affixed to machinery or equipment.
Useful Life	Length of time a machine part is expected to last under normal conditions.

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