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## **Production Equipment and Utilities Used by Supermarkets, Grocery Stores, and Delis**

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### **Introduction**

Supermarkets, grocery stores, and delis can purchase machinery and equipment used directly and predominantly in the production of tangible personal property for sale without paying sales tax. They can also purchase utilities they use to operate equipment used in production without paying sales tax. This bulletin explains:

- what type of machinery and equipment used in supermarkets, grocery stores, and delis qualifies as production equipment; and
- how to calculate the percentage of utilities used to operate production equipment.

### **Equipment used in production**

Machinery and equipment may be purchased tax free if it is used directly and predominantly (more than 50% of the time) in the production of tangible personal property for sale. The manufacturing process can generally be broken down into three types of activities: administration, production, and distribution. Only machinery and equipment used more than 50% of the time in production can be purchased tax free.

*Production* starts with the handling and storage of raw materials at the plant site, in this case at the store, and continues through the point where the goods are packaged and ready for sale.

In the case of supermarkets, grocery stores, and delis, most production takes place in the deli, butcher shop, and bakery areas.

Machinery or equipment that is used *directly* during the production phase means machinery or equipment that:

- changes material to form the product to be sold; or
- has an active role in the production of the product to be sold; or
- is used in handling, storing, or conveying materials or products on the production line; or
- is used to package the product for sale.

To be exempt from tax, equipment must be used directly and predominantly in production of food commonly sold by grocery stores, and not used to prepare "restaurant-type" food (i.e., food or drink sold for on-premises consumption, sandwiches, self-service salad bars, food or drink sold in a heated state, and unheated beverages that are not sold in the same form, condition, quantities and packaging as they are ordinarily sold in grocery stores). (See *Restaurant-type food* below.)

### **Butcher shop**

Machinery and equipment used more than 50% of the time to process and package meat for sale can be purchased tax free. This includes:

- power meat saws, cubers, and grinders;

- sausage stuffers and hamburger patty machines;
- power tenderizers;
- scales used to weigh processed meat for labeling; and
- coolers and freezers used to store unprocessed product.

Coolers, freezers, and display cases that are used predominantly to store meat that has already been processed, or that is packaged and ready for sale, do not qualify for exemption.

For more information, see [Publication 852](#), *Sales Tax Information For: Manufacturers, Processors, Generators, Assemblers, Refiners, Miners and Extractors, and Other Producers of Goods and Merchandise*.

### **Deli area**

Only equipment that is used more than 50% of the time to process food for sale at food stores may be purchased tax free. Equipment used to cook, prepare, or package restaurant-type food for sale is taxable.

*Example: A deli purchases a slicer that will be used 75% of the time to slice deli meats and cheese to be sold by the pound (prepackaged or sliced to order). The deli can purchase the slicer without paying sales tax.*

*Example: A deli purchases a slicer that will be used more than 50% of the time to slice deli meats and cheeses that will be used in preparing sandwiches for sale. The deli can't purchase the slicer without paying sales tax because it is used more than 50% of the time to prepare restaurant-type food.*

Coolers and display cases used predominantly to store items not yet ready for sale (e.g., meats and cheeses not yet sliced or packaged for sale) can be purchased without paying sales tax. Coolers and display cases used predominantly to store packaged salads or other foods finished and ready for sale cannot be purchased without paying sales tax.

Equipment used in the preparation of deli platters for sale, and coolers and display cases that are used to store products that are packaged and ready for sale, do not qualify for exemption.

### **Bakery area**

Equipment used more than 50% of the time to prepare, bake, and package bakery items for sale may be purchased tax free as long as the baked goods are being sold for off-premises consumption.

Some examples of machinery and equipment that would qualify include:

- mixers,
- scales,
- proof boxes,
- ovens,
- cooling racks, and
- bread slicers.

### **Utilities**

Fuel, gas, electricity, refrigeration, and steam (collectively, "utilities") used in the production of tangible personal property for sale may qualify to be exempt from tax. Utilities are exempt when used directly and exclusively in the production process. Therefore, if machinery and equipment have both taxable and exempt uses, the portion of the utilities used in the production process will qualify for exemption, even if the

machinery itself does not. For purposes of the exemption, adequate records must be maintained to support exempt use.

*Example: A deli purchases a slicer that will be used 70% of the time to slice meats and cheeses that will be used in preparing sandwiches for sale, and 30% of the time to slice deli meats and cheeses to be sold by the pound (prepackaged or sliced to order). The slicer itself does not qualify for the production exemption. However, 30% of the electricity used to operate the slicer will qualify for the exemption since it is used directly and exclusively in the production of food for sale.*

You can have an engineering survey done to determine the amount of utilities used in production. Also, [Publication 852, Sales Tax Information For: Manufacturers, Processors, Generators, Assemblers, Refiners, Miners and Extractors, and Other Producers of Goods and Merchandise](#), will give you a formula to use in determining the amount of electricity used in production (see Appendix A beginning on page 44). (**Note:** No formulas have been developed by the Tax Department for other types of utility services.)

### Refunds and use tax

If you pay sales tax on purchases of equipment or utilities that qualify for exemption, you can apply for a refund of sales tax directly from the Tax Department. File [Form AU-11, Application for Credit or Refund](#), along with copies of your utility bills and proof of exempt use. For more information see Tax Bulletin [How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#).

If sales tax is not charged or paid on taxable equipment or taxable utilities usage, you must to pay the tax directly to the Tax Department. For more information see Tax Bulletin [Use Tax for Businesses \(TB-ST-910\)](#).

### What form to use

If you are purchasing machinery or equipment that qualifies as exempt, complete [Form ST-121, Exempt Use Certificate](#), and give it to your supplier.

You can purchase utilities that are used in production without paying sales tax by issuing [Form ST-121, Exempt Use Certificate](#), to your utility company. The utility company will not charge sales tax on any utilities purchased, and you will be responsible to calculate and remit any tax due on utilities not used in production by your business.

### Taxable utilities

Utilities used for general lighting and front-end operations, or for freezers, coolers, and display cases used throughout the supermarket or deli predominantly for the storage of goods packaged and ready for sale, do not qualify for the sales tax exemption. This includes the frozen food, dairy, and meat sections of the store.

### "Restaurant-type" food

Ovens, fryers, heat lamps, toasters, coolers, etc., that are used in the storage, preparation, or serving of restaurant-type food ( i.e., food or drink sold for on-premises consumption, sandwiches, self-service salad bars, food sold in a heated state, and beverages ordinarily dispensed at a soda fountain) can't be purchased without paying sales tax. Equipment that is used in multiple areas of the store must be used more than 50% of the time in a production activity to qualify as production equipment.

### Produce area

Generally, machinery, equipment, and supplies used in the produce section of the supermarket are not considered to be used in production. Any washing, trimming, and repackaging of produce is considered part of the distribution or sale of the product. See

[TSB-M-82\(7\)S](#), *Taxability of Machinery, Equipment, Supplies and Energy Sources Used in Operating Produce Departments in Supermarkets and Grocery Stores.*

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

**References and other useful information**

**Tax Law:** Section 1115(a)(12)

**Regulations:** Sections 528.13 and 528.22

**Publications:**

[Publication 852](#), *Sales Tax Information For: Manufacturers, Processors, Generators, Assemblers, Refiners, Miners and Extractors, and Other Producers of Goods and Merchandise*

**Memoranda:**

[TSB-M-82\(7\)S](#), *Taxability of Machinery, Equipment, Supplies and Energy Sources Used In Operating Produce Departments of Supermarkets and Grocery Stores.*

**Bulletins:**

[How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#)

[Recordkeeping Requirements for Sales Tax Vendors \(TB-ST-770\)](#)

[Use Tax for Businesses \(TB-ST-910\)](#)