



Utilities Used in Production

Introduction

Businesses may make tax-exempt purchases of utilities that are used directly and exclusively to produce tangible personal property for sale. This bulletin will explain which purchases qualify for the exemption from sales tax.

In this bulletin, the term *utilities*¹ will be used to refer to:

- gas (natural gas, propane, etc.);
- electricity;
- coal;
- refrigeration;
- steam;
- wood (including wood pellets and other compressed wood products); and
- gas, electric, refrigeration, and steam services.

Qualifying uses

Producing tangible personal property generally involves one or more of the following activities:

- manufacturing
- processing
- generating
- assembling
- refining
- mining
- extraction

These activities can generally be broken down into three phases:

- *Administration* - which includes sales promotion, accounting, purchasing, maintenance, receiving and testing of raw materials, and clerical work.
- *Production* - which includes the production line, starting with the handling and storage of raw materials at the plant site, and continuing through the last step of production where the goods are packaged and ready for sale.
- *Distribution* - which includes everything that takes place after the goods are packaged and ready for sale, including storage, loading on trucks for shipment, and the display and sale of the finished product.

To qualify for the exemption, the utilities must be used *directly* and *exclusively* (100%) in the *production* phase.

¹ This bulletin does not address purchases of motor fuel and diesel motor fuel. Please see Tax Bulletin [Motor Fuel and Diesel Motor Fuel Used in Production \(TB-ST-587\)](#) for information on the production exemption for purchases of motor fuel and diesel motor fuel.

To qualify as being used *directly* in production, utilities must be used or consumed during the production phase to:

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

Exempt production machinery or equipment is machinery or equipment that:

- acts upon or changes material to form the product to be sold;
- has an active and necessary role in the production of the product;
- is used in the handling, storage, or conveyance of materials or product produced through the production line; or
- is used to package the product for sale.

Utilities used in the *administration* or *distribution* phases do not qualify for the exemption. Therefore, utilities **do not** qualify for the exemption if they are used or consumed in:

- the lighting of buildings;
- the heating and cooling of buildings;²
- the preparation of food and drink subject to tax imposed by section 1105(d) of the Tax Law; or
- the storage of tangible personal property.

Making tax-exempt purchases

Registered vendors should use [Form ST-121](#) to purchase utilities used or consumed directly and exclusively in the production of **tangible personal property** for sale. These purchases are exempt from both the New York state and local sales taxes.

[Form ST-121](#) may also be used to purchase utilities used or consumed directly and exclusively in the production of gas, electricity, refrigeration, and steam for sale. These purchases are exempt from the New York state sales and use taxes and from local taxes **outside** New York City. However, these purchases are subject to New York City's local sales tax rate when used or consumed **in** New York City.

Note: [Form ST-121](#) **cannot be used** to purchase motor fuel and diesel motor fuel exempt from tax even if the fuel will be used in production activities. See Tax Bulletin [Motor Fuel and Diesel Motor Fuel Used in Production \(TB-ST-587\)](#) for more information.

Allocating utilities to compute the percentage of exempt use

Utilities must be used *directly* and *exclusively* (100%) in production to be exempt from tax. If a separate meter tracks utilities used directly and exclusively in production, the utilities can be purchased exempt from tax by issuing [Form ST-121](#) to the utility supplier.

However, some types of utilities are normally received by a purchaser in bulk or in a continuous flow and may be used for both exempt (production) and taxable (lighting, heating, etc.) purposes. In these circumstances, the purchaser can either:

- pay sales tax on the purchase of the utilities and use [Form AU-11, Application for Credit or Refund of Sales or Use Tax](#), to apply for a credit or refund of sales tax paid on the portion of the utilities used for exempt purposes (see Tax Bulletin [How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#)); or

² Utilities used for heating and cooling will qualify for the exemption only if it can be shown that they are used exclusively to create certain conditions that are necessary for production. General heating and cooling maintained in the range for employee comfort, or for dual purposes, does not qualify for the exemption.

- use [Form ST-121](#) to purchase the utilities exempt from sales tax, provided the purchaser pays any state and local taxes due on the taxable portion of the utilities when filing its sales and use tax return (see Tax Bulletin [Use Tax for Businesses \(TB-ST-910\)](#)).

The purchaser must substantiate the amounts used for exempt and taxable purposes using alternative methods where direct, separate metering is not available. To substantiate its allocation, the purchaser may use an engineering survey or other formula to arrive at the amounts used in an exempt manner. Also, Appendix A of [Publication 852, Sales Tax Information For: Manufacturers, Processors, Generators, Assemblers, Refiners, Miners and Extractors, and Other Producers of Goods and Merchandise](#), contains a formula for use in determining the amount of electricity used in production. (**Note:** No formulas have been developed by the Tax Department for other types of utility services.)

Farm production

The production exemption available for farm production is more expansive than the general production exemption. Utilities only have to be used *predominantly* (more than 50% of the time) - and not *directly* - in farm production to qualify for the exemption. See Tax Bulletin [Exemptions for Farmers and Commercial Horse Boarding Operators \(TB-ST-244\)](#) for more information.

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(c)(1)

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-00\(9\)S, Exemption for Utilities Used in Production in New York City](#)

Bulletins:

[Exempt Use Certificate \(TB-ST-235\)](#)

[Exemptions for Farmers and Commercial Horse Boarding Operators \(TB-ST-244\)](#)

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

[Motor Fuel and Diesel Motor Fuel Used in Production \(TB-ST-587\)](#)

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