

July 3, 2007

<name>

<company>

<address>

<city, state zip>

Formal Ruling 2007-05

Dear <name>:

You have requested a formal ruling on behalf of <company> as to whether sanitation equipment and chemicals used by <company> are exempt under 32 V.S.A. § 9741(14), the so-called manufacturing exemption to the sales and use tax.

You have provided the following facts. <Company> is a manufacturer of various dessert products and ice cream add-ins. The business is operated in three daily shifts; two of the shifts are for production of the products, while the third is dedicated solely to sanitation. The sanitation shift is considered essential to the process of creating the dessert and ice cream products because it minimizes the risk of microbial contamination and allergen exposure to <company>'s customers. The equipment used is brought onto the production floor to clean the manufacturing equipment, and is used 100 percent of the time for that purpose. Examples of the equipment include high-pressure spray guns and hoses, foaming stations and hoses (to dispense the chemicals), and a central sanitizer station and hoses (for spraying equipment with sanitizer). There is also a "COP" (clean out of place) tank that is used exclusively to clean the ice cream makers, and a dishwasher to wash any baking trays and utensils used in the manufacturing process. <Company> uses chemicals in the sanitation process which you believe are exempt as manufacturing supplies that are consumed or destroyed during the manufacture of tangible personal property.

Vermont imposes a sales tax on the retail sale of tangible personal property in this state. 32 V.S.A. § 9771(1). The legislature has provided an exemption from the tax, however, for

[t]angible personal property which becomes an ingredient or component part of, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for sale; machinery and equipment for use or consumption directly and exclusively, except for isolated or occasional uses, in the manufacture of tangible

personal property for sale, or in the manufacture of other machinery or equipment, parts or supplies for use in the manufacturing process.

32 V.S.A. § 9741(14). Machinery and equipment “used prior to the first production, operation or subsequent to the initial packaging of a product” is not exempt from the tax, “unless such uses are merely isolated or occasional.” *Id.*

When construing the relevant statute, the primary goal “is to effectuate the intent of the Legislature.” *Tarrant v. Dep’t of Taxes*, 169 Vt. 189, 197 (1999). If the legislature’s intent is clear from the language used, the statute must be enforced “according to its terms without resorting to statutory construction.” *Will v. Mill Condominium Owners’ Ass’n*, 2004 VT 22 ¶15. Moreover, exemptions from the tax are to be strictly construed and the intention to grant the exemption clearly expressed by the legislature. *Wettereau, Inc. v. Dep’t of Taxes*, 141 Vt. 324, 330 (1982).

Although manufacturing includes food processing, Reg. §1.9741(14)-2(B),* the legislature has expressly limited the manufacturing process to the period of time beginning with the first production operation and ending with initial product packaging. 32 V.S.A. § 9741(14); *see also* Reg. § 1.9741(14)-2 (G)(1) (“Not included in the term ‘manufacturing process’ are activities prior to the first production stage . . . or any activities following initial packaging.”). Thus, machinery and equipment used in activities that occur outside of the manufacturing process, as delineated by the legislature, is not exempt.

Based on the facts you have provided, the cleaning and sanitization of machinery and equipment is not an integrated part of the manufacturing process occurring prior to initial product packaging, but is instead an activity which occurs after the manufacturing process has been completed. Accordingly, whether or not the cleaning process is necessary to maintain the integrity of your products, it does not constitute manufacturing under Vermont law and the equipment, chemicals and other supplies used for sanitization are therefore not exempt. *See* Reg. §1.9741(14)-4 (“Machinery and equipment employed in pre-production or postproduction is not eligible for exemption”); Reg. §1.9741(14)-2(C) (“Equipment and supplies, including soaps and cleaning compounds . . . used for general cleaning and maintenance of manufacturing or processing property are not exempt from taxation.”).

This ruling will be made public after deletion of the parties’ names and any information which may identify the parties. A copy of this ruling showing the proposed deletion is attached, and you may request that within thirty (30) days the Commissioner delete any further information that might identify the interested parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the

* Food processing is defined as “an integrated series of operations, usually involving machinery, which produces a distinct product for commercial distribution.” Reg. §1.9741(14)-2 (D).

Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.

Section 808 of Title 3 provides that this ruling will have the same status as an agency decision or an order in a contested case. You have the right to appeal this ruling within thirty days.

Sincerely,

Judith Henkin
Attorney for the Department

Approved this ____ day of _____, 2007.

Tom Pelham
Commissioner of Taxes