

VERMONT DEPARTMENT OF TAXES

TECHNICAL BULLETIN

TAX: Sales and Use

TB-09

SUBJECT: Sales Tax Exemption for Materials Used in the Construction of Manufacturing Facilities

ISSUED: December 18, 1997

REVISED: May 22, 2017

STATUTORY REFERENCE: 32 V.S.A. § 9741(39)

The following retail sales or uses are exempt from the Vermont Sales and Use Tax under 32 V.S.A. § 9741(39).

Sales of building materials within any three consecutive years in excess of one million dollars in purchase value used in the construction, renovation, or expansion of facilities which are used exclusively, except for isolated or occasional uses, for the manufacture of tangible personal property for sale.

What constitutes a “facility?”

In the context of this exemption, the term “facility” is interpreted broadly and is not limited to structures. Gravel, fill, culverts, paving materials, and similar items used in site preparation, are “building materials.”

What does it mean for a facility to be “used exclusively” for the manufacture of tangible personal property for sale?

A facility is used “exclusively” for manufacturing if direct manufacturing activities, as defined by 32 V.S.A. § 9741(14) and related regulations, are conducted on the site and other activity on the site is limited to (1) indirect manufacturing activities as defined by Vermont Sales and Use Tax Regulation 1.9741(34), (2) activity which directly supports the manufacturing personnel (such as, training, cafeterias, parking, break areas, child care), and (3) activity such as marketing or distribution of the product, research and development of product, or management of the manufacturing operation which are activities traditionally conducted at a manufacturing site.

Retail stores, support for employees performing other functions, or activities not traditionally conducted on the manufacturing site, are not manufacturing for the purposes of this exemption. If a facility is used for these purposes, except on an occasional or isolated basis, it does not qualify.

An expansion or renovation may qualify for the exemption even if it does not directly include manufacturing operations. As long as direct manufacturing is conducted at the facility, any construction or expansion will qualify. The expansion could be limited to components of the facility used for warehousing, research and development, or other ancillary activity.

A manufacturing facility must be located on the same contiguous parcel as any expansion construction. For example, if a warehouse is nearby but not on land contiguous with the site of the direct manufacturing operations, expansion of the warehouse would not qualify for the exemption. Likewise, if direct manufacturing is conducted at two noncontiguous sites, either or both sites may qualify separately but each would be taxable to the extent of the first \$1,000,000.00 spent to construct or expand that facility. A manufacturer may, however, define its manufacturing facility to be less than an entire contiguous property. For example, if part of a contiguous property is used for a retail store, other components of the site may still qualify as a facility which is used exclusively for manufacturing.

The exemption is not limited to a single project. All construction or expansion on the qualifying manufacturing facility during the three-consecutive year period qualifies, even if done in separate areas and under separate

contracts.

What items of personal property are used for construction but not exempt under this exemption?

Supplies other than building materials are not exempt. Supplies such as fuel, signs, engineering tape, and saw blades consumed in the construction of manufacturing facilities are not exempt under 32 V.S.A. § 9741(39) because they are not building materials.

Additionally, property that is not consumed in construction is not exempt under 32 V.S.A. § 9741(39). The exemption is not available for the rental or use of forms, staging, or other reusable equipment.

Use of Technical Bulletins

A technical bulletin provides general information to the public and does not replace the need for competent legal or accounting advice. It is intended to provide an overview only. Vermont tax statutes, regulations, Vermont Department of Taxes rulings, or court decisions are controlling authority.



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Commissioner of Taxes

May 26, 2017
Date