

Ruling 92-01

Vermont Department of Taxes

Date: February 3, 1992

Written By: Mary L. Bachman, Attorney for the Department

Approved By: Joyce H. Errecart, Commissioner of Taxes

You have requested an opinion with respect to the application of Vermont's sales and use tax laws to the purchase of an electric generator. This opinion relies on your letter to Mr. George Phillips which was received by the Department on October 18, 1991.

[Company] wishes to purchase a [Generator] which would provide electricity to operate manufacturing machinery and equipment at its sawmill. More than ninety-six percent of the generator's use would be in the manufacturing process. You believe the purchase of the generator is exempt because (1) it will be used to operate manufacturing machines and equipment; and (2) the generator itself manufactures electricity.

32 V.S.A. § 9741(14) exempts from the sales and use tax "(14) Tangible 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 but does not include fuel and electricity; 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; and devices used to monitor manufacturing machinery and equipment or the product during the manufacturing process."

Although the generator will produce electricity, it is not "machinery and equipment for use or consumption directly and exclusively...in the manufacture of tangible personal property for sale". Lumber, not electricity, is the tangible personal property for sale. For machinery or equipment to be exempt under this clause of the exemption, it must act directly and exclusively on the tangible personal property for sale. The generator does not act directly upon the lumber.

However, the generator is exempt as machinery or equipment which will be used directly and exclusively "in the manufacture of other machinery or equipment, parts or supplies for use in the manufacturing process". Electricity is a supply as it used in [the Company's] manufacturing process. Although some of the electricity produced by the generator will be used to operate overhead lighting and light maintenance equipment, these uses of the generator will occupy less than four percent of its time. Under section

9741(14) "it shall be rebuttably presumed that uses are not isolated or occasional if they total more than four percent of the time the machinery or equipment is operated". Conversely, use for nonmanufacturing purposes less than four percent will not defeat the exemption.

To the extent that this ruling is in conflict with Formal Ruling 90-3, that ruling is withdrawn.

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