

DEPARTMENT OF REVENUE

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2. Performing custom work to the individual order of household consumers.
3. Experimental and development activities.
4. Grain drying.
5. Logging and forestry operations.
6. Mining.
7. Paper recycling.
8. Photography.
9. Popping corn.
10. Quarrying and rock crushing operations.
11. The business of raising and breeding animals.
12. Real property construction activities.
13. Typesetting.
14. Vending machine operations.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.40 Exemption of machines and processing equipment. (sections 77.51(27) and 77.54(6) (a), Wis. Stats.) (1) GENERAL. (a) Section 77.54(6) (a) exempts the gross receipts from the sale of and the storage, use or other consumption of "Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property."

(b) Section 77.51(27) provides "For purposes of s. 77.54(6) (a) 'manufacturing' is the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing."

(c) In determining whether a particular machine or piece of processing equipment is included in this exemption, these 2 statutes must be considered together.

(2) **CONDITIONS FOR EXEMPTION AND EXAMPLES.** This exemption shall apply if all the following conditions are met: (a) Machines and processing equipment shall be used by a *manufacturer* in manufacturing tangible personal property. The exemption shall not apply to machines and processing equipment used in providing services or in other nonmanufacturing activities. For example, machines and equipment of a dry cleaner are not used by a manufacturer in manufacturing, because a dry cleaner provides a service and is neither a manufacturer nor produces tangible personal property.

(b) Machines and processing equipment shall be used *exclusively in manufacturing*. The exemption shall not apply if machines and processing equipment are used partially or totally in nonmanufacturing activities. For example, a forklift truck used partially on a production line to move products from machine to machine and used in a warehouse to

move and stack finished products is not used exclusively in manufacturing.

(c) Machines and processing equipment shall be used *directly in manufacturing*. The exemption shall not apply if machines and processing equipment are not used directly in the step-by-step processes by which an end product results, even though such machine and equipment are indirectly related to the step-by-step processes. For example, machines and equipment are not used directly in manufacturing if used for sweeping a plant; disposing of scrap or waste; plant heating or air conditioning; communications, lighting, safety, fire protection or prevention; research; storage; delivery to or from a plant or repair or maintenance of machines, processing equipment or facilities. In addition, electric substations, tool storage facilities, water softening equipment, refrigerated storage facilities and catwalks that provide access to various parts of a building are not used directly in manufacturing. Machine foundations are real property improvements rather than personal property.

(3) OTHER EXAMPLES OF THE EXEMPTION. Other examples of application of the exemption are as follows: (a) Small tools used exclusively and directly in the manufacturing process qualify as "processing equipment." Small tools include hand tools such as drills, saws, micrometers and hammers. However, if such items are used partially or totally for machine repair or general maintenance, they are not exempt.

(b) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce other machines or processing equipment which, in turn, are used by such manufacturer to produce tangible personal property for sale. For example, a lathe purchased by a manufacturer and used directly and exclusively to produce machines which are used on the manufacturer's production line is exempt. However, if the lathe is used partly for production of such machines and partly for repair purposes, it is not exempt.

(c) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce component parts of tangible personal property destined for sale. For example, a printing press used by a manufacturer exclusively to print labels for its manufactured products is exempt. However, if the press is used partially to print advertising materials and office forms, it is not exempt.

(d) The exemption does not apply to machines or processing equipment used in whole or in part by a manufacturer before the manufacturing process has begun or after it has been completed (e.g., machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities, research, or crating or packaging for shipment).

(e) The exemption does not apply to tangible personal property, which is not machinery or equipment, but is used in a manufacturing plant. For example, sweeping compounds are factory supplies rather than processing equipment. Gloves, shoes, coveralls and similar items are personal apparel rather than processing equipment.

(4) REPAIR OF EXEMPT MACHINERY AND PROCESSING EQUIPMENT. The gross receipts from the sale of and the storage, use or other consumption of repair or replacement parts and from repair service for exempt machines and processing equipment are exempt. Examples of such parts include conveyor belts, grinding wheels, grinding balls, machine drills,

auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies, molds and patterns.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.41 Exemption of property consumed or destroyed in manufacturing. (sections 77.54(2) and 77.54(6) (a), Wis. Stats.) (1) GENERAL. (a) Section 77.54 provides in part: "There are exempted from the taxes imposed by this subchapter: . . . (2) The gross receipts from sales of and the storage, use or other consumption of tangible personal property . . . which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity."

(b) As used in section 77.54(2), Wis. Stats., "manufacture" shall conform to the definition of "manufacturing" in section 77.51(27), Wis. Stats.

(2) RELATIONSHIP OF SECTIONS 77.54(2) AND 77.54(6) (a). In construing the exemption provided in section 77.54(2), it is necessary to refer to another exemption provided in section 77.54(6) (a). The latter section exempts gross receipts from the sale of certain machines, equipment and parts thereof used in manufacturing (this exemption is interpreted in rule Tax 11.40). Sections 77.54(2) and 77.54(6) (a) do not overlap and are mutually exclusive. Accordingly, machines, processing equipment and parts thereof must be within the exemption provided by section 77.54(6) (a) and if they are not, cannot be within the exemption provided by section 77.54(2).

(3) EXAMPLES OF PERSONAL PROPERTY WITHIN SECTION 77.54(2) EXEMPTION. (a) The following property is within the exemption provided by section 77.54(2) if the property is consumed, destroyed or loses its identity in the manufacture of tangible personal property destined for sale:

1. Acids.
2. Bleaching agents.
3. Chemicals.
4. Cleaning compounds and solvents for maintaining manufacturing machinery during the manufacturing process.
5. Cutting and lubricating oils.
6. Filtering clay.
7. Fluxing material.
8. Foundry sand.
9. Greases.
10. Lapping and grinding compounds.
11. Purification agents.
12. Sandpaper.
13. Shielding gases.

14. Wood used to smoke products.

(b) The exemption is not allowed when property is sold to and used by a person other than a manufacturer (e.g., by an automobile repair shop or other repair business). A purchaser also may not claim this exemption if the purchaser does not sell the item produced. For example, a modular home manufacturer-contractor is not entitled to the exemption when purchasing property consumed, destroyed or losing its identity in the manufacture of homes which it, as a contractor, will affix to real property, since the manufacturer-contractor is the consumer of all personal property used in such construction.

(4) **EXAMPLES OF PERSONAL PROPERTY NOT WITHIN SECTION 77.54 (2) EXEMPTION.** (a) The following property is not within the exemption provided by section 77.54 (2), although such property may be exempt under section 77.54 (6) (a) if the property is a part of a machine or processing equipment used exclusively and directly in manufacturing (as described in rule Tax 11.40):

- (a) Machine drills and auger bits.
- (b) Milling cutters
- (c) Grinding wheels.
- (d) Chucks, jigs and dies.
- (e) Saw blades.
- (f) Machine tool holders.
- (g) Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels and spray guns.
- (h) Wearing apparel.

(5) **FUEL AND ELECTRICITY.** Fuel and electricity are specifically excluded from the exemption provided by section 77.54 (2) even though such property may be consumed, destroyed or lose its identity in the manufacture of products destined for sale. Since "fuel" is not defined in section 77.54 (2), it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:

- (a) Oxygen used to enrich the fuel mixture in an industrial furnace, or oxygen and acetylene used in a welding process.
- (b) Coal or coke used by a foundry, except the portion of the coke which actually becomes an ingredient or component part of any grey-iron produced.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.45 Sales by pharmacies and drug stores. (sections 77.51 (21) and (22) and 77.54 (14), (22) and (28), Wis. Stats.) (1) **TAXABLE SALES.** All sales of tangible personal property by a pharmacy or drug store shall be taxable under the general sales tax law unless exempted by a specific statute. The most common exemptions are described and enumerated in this section.

Register, July, 1978, No. 271