

State of Rhode Island and Providence Plantations
Rhode Island Department of Revenue
Division of Taxation

Public Notice of Proposed Rule-Making

RULE IDENTIFIER: ERLID 4318

REGULATION TITLE: Manufacturing, Property and Public Utilities Service Used In

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public Notice Date: February 16, 2018

End of Comment Period Date: March 19, 2018

Pursuant to the provisions of R.I. Gen. Laws § 42-35-2(a)(1), and in accordance with the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, the Division of Taxation hereby gives notice of its intent to repeal a regulation regarding Manufacturing, Property and Public Utilities Service Used In.

The proposed regulation and concise summary of non-technical requirements and proposed new rules are available for public inspection at www.tax.ri.gov, in person at the Rhode Island Division of Taxation, or requested by e-mail at Michael.Taylor@tax.ri.gov or by calling Michael Taylor at (401) 574-8930.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) whether the regulation, in and of itself, would have significant economic impact on small businesses. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by March 19, 2018 to Michael Taylor, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8930 or via e-mail at Michael.Taylor@tax.ri.gov.

This rule is not expected to be controversial and shall be submitted as a direct final rule pursuant to R.I. Gen. Laws § 42-35-2.11. The proposed rule takes effect thirty (30) days after publication if no objection is received. If no objection is received, the rule becomes final. If an objection to the rule is received from any person not later than thirty (30) days after publication of the notice of the proposed rule, the proposed rule does not become final.

Rhode Island Department of Revenue

Division of Taxation

Concise summary of all non-technical requirements pursuant to R.I. Gen. Laws § 42-35-2(a)(1) for rules and regulations regarding Manufacturing, Property and Public Utilities Service Used In.

The purpose of this regulation is repeal the regulation regarding Manufacturing, Property and Public Utilities Service Used In. **This regulation shall take effect March 19, 2018.**

~~State of Rhode Island – Division of Taxation~~

~~Sales and Use Tax~~

~~Regulation SU 07-58~~

~~Manufacturing, Property and Public Utilities Service Used In~~

~~I. For the purpose of this regulation, the business of manufacturing, converting, processing, compounding, assembling, preparing, or producing shall be divided into three parts as follows:~~

- ~~1. Administration, meaning all administrative work such as general office operations, accounting, purchasing, collection, sales promotion, clerical work in production such as preparation of work records, production records and time records, and machinery or equipment or supplies used in the transporting of raw materials to the industrial plant.~~
- ~~2. Production, meaning all operations performed in the producing or processing room, shop or plant, including the production line starting with the handling and storage of raw materials in the industrial plant and continuing through the last step of production where the product is finished or completed and packaged for sale.~~
- ~~3. Distribution, meaning all operations subsequent to production such as handling, storing, selling, displaying, loading and transporting the manufactured products.~~

~~The sales or use tax applies to property and public utility services used in administration and distribution as defined above. The tax applies to property placed in the producing or processing room, shop, or plant if such property is used solely in administration or distribution work.~~

~~Retailers such as restaurants, donut shops, fast food businesses, etc., are not manufacturers as that term is commonly understood. Therefore, the manufacturing exemptions under sections 44-18-30(7) and 44-18-30(22) do not apply to such retailers.~~

~~II. Property used in production~~

~~Under section 44-18-30(7) the sale, (including lease or rental) and the storage, use, or other consumption in this state of the following items of tangible personal property used in the production process, as defined above, are exempt:~~

- ~~1. Tangible personal property which will become an ingredient, component, or integral part of the property produced to be sold.~~
- ~~2. Tangible personal property consumed in production of property to be resold.~~
- ~~3. Coal, fuel oil, electricity, natural gas, artificial gas, steam, refrigeration, and water consumed in the production of property to be resold.~~

4. Coal, fuel oil, electricity, natural gas, artificial gas, steam, refrigeration, and water when used to generate power or to maintain a fixed temperature necessary in the production of tangible personal property for resale.
5. Work clothes, safety goggles, leather or rubber aprons or similar items of work clothes.
6. Lubricating oils and greases used on machines that manufacture products for resale.

"Consumed" means destroyed, used up, or worn out to the degree or extent that such property cannot be repaired, reconditioned, or rendered fit for further manufacturing use.

"Consumed" shall also mean and/or include mere obsolescence.

The following tangible personal property, machinery and equipment, is taxable and not included in the scope of this exemption:

1. Cleaning, janitor, and first aid supplies.
2. Boiler compounds and water additives used in the maintenance of machinery or equipment.
3. Office equipment and supplies.
4. Equipment and supplies used in selling and distribution.
5. Equipment and supplies used in transportation activities.

III. Section 44-18-30(22) provides a further exemption from the sale (including lease or rental) and from the storage, use, or other consumption in this state of tools, dies and molds, and machinery and equipment (including replacement parts thereof) to the extent used in an industrial plant in the actual manufacture, conversion or processing of tangible personal property including computer software as that term is utilized in SIC numbers 7371, 7372 and 7373, or in the corresponding industry sectors of the North American Industry Classification System (NAICS Code), to be sold or such machinery and equipment used in the furnishing of power to an industrial manufacturing plant.

Under section 44-18-30(22) the sales or use tax applies to the sale, (including lease or rental), storage, use, or other consumption in this state of tools, dies and molds, and machinery and equipment (including replacement parts thereof) to the extent used in administration and distribution operations.

The exemption provided in section 44-18-30(22) applies to the sale (including lease or rental) and to the storage, use or other consumption in this state of tools, dies and molds, and machinery and equipment (including replacement parts thereof) to the extent used in the production of tangible personal property including computer software to be sold.

In the event that a manufacturer purchases equipment that does not qualify for exemption, it shall pay the tax due at time of purchase. Provided, however;

~~(a) If the equipment purchased partially qualifies for exemption and the manufacturer knows the extent of the partial exemption, the manufacturer shall give the vendor a Manufacturer's Exemption Certificate and file a use tax return with the Division of Taxation and pay a use tax based on the percentage of the nonexempt use of the equipment, or~~

~~(b) If the equipment purchased partially qualifies for exemption and the manufacturer does not know the extent of the partial exemption, it shall give the vendor a Manufacturer's Exemption Certificate and file a use tax return with the Division of Taxation and pay use tax on the entire cost of the equipment.~~

~~If a manufacturer files a use tax return under the provisions of (a) or (b) above, it shall, twenty-four months thereafter, analyze the machinery usage to determine the actual exempt usage for that machinery. This shall be compared to the original estimate made and any balance due or credit due the manufacturer must be reported on the next month's use tax return. Any balance due or credit due shall bear interest from time of original purchase.~~

~~The word machinery includes tools, dies and molds, and machinery and equipment (including replacement parts thereof).~~

~~Machinery used in the actual manufacture, conversion, or processing of any computer software or tangible personal property which is not to be sold and which would be exempt under this section or section 44-18-30(22) if purchased from a vendor shall be exempt under this paragraph even if such operation, function or purpose is not an integral or essential part of a continuous production flow or manufacturing process. This is so even though the tangible personal property being produced by such machinery would in itself be exempt under 44-18-30(7) or under 44-18-30(22) if purchased from a vendor thereof.~~

~~Where a portion of a group of portable or mobile machinery is used in the actual manufacture, conversion or processing of tangible personal property or computer software to be sold, as heretofore defined, such portion, if otherwise qualifying, shall be exempt under this paragraph even though the machinery in said group is used interchangeably and not otherwise identifiable as to use.~~

~~The term "industrial plant" means a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business.~~

~~IV. Use of Resale or Exemption Certificate~~

~~In making exempt purchases for use in production, a manufacturer should furnish vendors with either a Resale Certificate, a Manufacturer's Exemption Certificate, or any certificate or statement that contains the required information and signature. However,~~

~~these certificates should not be utilized in making purchases for use in administration or distribution, as defined above, and a tax must be paid on purchases for these purposes.~~

~~The acceptance of a properly executed certificate relieves the vendor from the burden of proof.~~

~~If a manufacturer, processor or convertor gives an exemption certificate and thereafter consumes some of the property purchased for purposes other than production, he or she must report, as taxable receipts, the cost price of the property consumed in administration or distribution and pay the tax thereon.~~

~~In order that the Division of Taxation may verify a vendor's nontaxable sales upon audit, it is necessary that vendors retain executed exemption certificates. If a vendor lists nontaxable sales or services for which he has no exemption certificates, the Division of Taxation will presume such sales are taxable and make an assessment of tax against the vendor.~~

~~When it is not possible at the time tangible personal property or services are purchased to know how they will be used, the manufacturer, processor or convertor may issue a certificate to his vendor and may purchase without the tax. In such a case the purchaser must report and pay directly to the Division of Taxation any tax that is due based on nonexempt use made of the purchases.~~

~~V. The following guidelines may be used to determine if the exemption applies.~~

- ~~1. Machinery must be used by a manufacturer in manufacturing tangible personal property to be sold to be exempt. This excludes from the exemption all machinery used in the furnishing of services. For example, the machinery of a laundry or dry cleaner, since it does not manufacture tangible personal property, but rather provides a service, cannot be within the exemption.~~
- ~~2. Machinery used by a manufacturer before the manufacturing process has begun or after it has been completed is taxable. For example, machinery used for delivery to or from a plant, repair or maintenance of facilities, and crating or packaging for shipment are not within the exemption, except as provided in paragraph 4 below.~~
- ~~3. Machinery used by a manufacturer to produce component parts which are to become an integral part of the finished product to be sold would be exempt. For example, a milling machine used to make parts which are to become a component of the finished product to be sold would be exempt.~~
- ~~4. Packaging machinery when used to place the property to be sold in the primary container, package or wrapping in which such property is normally sold to the ultimate consumer is exempt. For example, a primary package or container includes the bottle or cap used for a carbonated beverage, the aerosol can, the wrapper for a candy bar or the tray for frozen convenience foods. Machinery used in packaging for the purposes of transporting, displaying or merchandising the product, where such packaging is normally discarded by the wholesaler, retailer, or ultimate consumer prior to the use or consumption of the product is taxable.~~

~~Such packaging includes shipping cartons, cases in which goods are placed for case lot sales, wooden cases, or six pack containers for carbonated or alcoholic beverages.~~

~~5. Materials used in constructing a foundation to hold production machinery would be subject to the tax in that such a foundation is part of a building or structure and does not qualify for the production exemption.~~

~~6. The parts and repair service for exempt machinery also are exempt. Examples of such items would be conveyor belts, grinding wheels, grinding balls, machine drills, auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies and molds.~~

~~DAVID SULLIVAN TAX ADMINISTRATOR EFFECTIVE DATE: JANUARY 2007~~

~~THIS REGULATION AMENDS AND SUPERCEDES REGULATION SU 00-58 PROMULGATED JANUARY 1, 2000.~~