

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Sales and Use Tax Exclusion for Manufacturing Machinery and Equipment (LAC 61:I.4301)

Under the authority of R.S. 47:301 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, issues an emergency rule to amend LAC 61:I.4301 relative to the definitions of *cost price*, *lease or rental*, and *sales price* for sales tax purposes.

Act 1 of the 2004 First Extraordinary Session provides exclusions from state sales and use tax for the purchase, lease or rental, and use of machinery and equipment used predominately and directly to manufacture *tangible personal property* or produce, process, and store food, fiber, or timber for sale. These amendments provide guidance regarding the definition of *cost price* under R.S. 47:301(3)(i), *lease or rental* under R.S. 47:301(28)(a), and *sales price* under R.S. 47:301(13)(k) as those terms relate to the purchase of machinery and equipment used predominantly and directly in the manufacturing of *tangible personal property* for sale or the production, processing, and storing of food, fiber, or timber for sale.

The emergency rule is necessary to prevent financial loss to vendors and purchasers of manufacturing machinery and equipment, because the phase in of the exclusion provided in Section 3 of the Act is effective on July 1, 2004. This Emergency Rule is effective July 1, 2004, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or adoption of the permanent rule, whichever occurs first.

Title 61 REVENUE AND TAXATION Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4301. Definitions

A. – C. ...

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Cost Price—

a. – g. ...

h. Under R.S. 47:301(3)(i), machinery and equipment is excluded from *cost price* if the property is used to manufacture *tangible personal property* for sale to another or is used directly in the production, processing, and storing of food, fiber, or timber for sale, is used predominantly and directly in the manufacturing process or in the actual manufacturing for agricultural purposes, and is eligible for depreciation for federal income tax purposes. The exclusion is subject to a phase-in between July 1, 2004, and June 30, 2010. The exclusion applies only to manufacturing businesses that have been assigned, by the Louisiana Department of Labor, North American Industrial Classification System (NAICS) codes within the agricultural, forestry, fishing, and hunting sector 11 or the manufacturing sectors 31 through 33 as they existed in 2002. Businesses that are not registered with the Louisiana Department of Labor or that have not been assigned these NAICS codes are not eligible to claim this exclusion. The exclusion applies to state use tax and local use tax if the political subdivision has adopted this exclusion by ordinance.

i. “Manufacturing” means putting raw materials through a series of steps that brings about a change in their composition or physical nature in order to make a new and different item of *tangible personal property* that will be sold to another. The manufacturing process begins when a raw material is introduced into the first machine or item of equipment that begins the change of the composition or physical nature of the raw materials into another product. The manufacturing process ends when the final product for sale has been placed into the packaging that will normally be delivered to the final consumer.

ii. (a). For machinery or equipment used to manufacture *tangible personal property* for sale, “used predominantly” means that more than 50 percent of the property’s use is in the process of causing a change in the composition or physical nature of the raw materials that are to become a final product for sale.

(b). For machinery or equipment used to produce, process, and store food, fiber, or timber for sale, “used predominantly” means the property is used more than 50 percent

of the time in the production, processing, and storing of food, fiber, or timber for sale. Equipment that remains idle between growing seasons is considered used for the production, processing, and storing of food, fiber, or timber during that time.

iii. (a). For a manufacturer of *tangible personal property* for sale, “used directly” describes the manner in which the machinery or equipment used in a plant facility alters the physical characteristics of the product during the manufacturing process. “Used directly” means that the machinery and equipment must have an immediate effect upon those products manufactured for ultimate sale to another person. Machinery and equipment used to manufacture intermediate products for internal use, such as manufacturing tools, internally consumed energy, and processing chemicals do not qualify for the exclusion.

(b). For a manufacturer of food, fiber, or timber for sale, “used directly” describes the manner in which the machinery or equipment is involved in the manufacturing for agricultural purposes. “Used directly” means that the machinery and equipment must have an immediate effect upon the food, fiber, or timber. Examples of machinery and equipment “used directly” in manufacturing for agricultural purposes include machinery and equipment for planting, cultivating, fertilizing, spraying, harvesting, producing, processing, and storing of food, fiber, or timber for sale. This exclusion includes materials used in the construction of facilities used to store the food, fiber, or timber for sale. Machinery and equipment “used directly” in manufacturing for agricultural purposes does not include facilities used to store equipment.

iv. Persons acting as mandataries (agents) of manufacturers can claim the exclusion on purchases of qualifying machinery and equipment that will ultimately be used by a business assigned an eligible NAICS code by the Department of Labor. The mandatory must obtain the manufacturer’s exclusion Form R-1071 and provide it, with a copy of the contract of mandate or the Department’s Form R-1072 (Manufacturer’s Designation of Mandate), to the seller at the time of purchase. For each job, mandataries must prepare a schedule of the manufacturing machinery and equipment that were purchased under this exclusion.

v. Repairs to manufacturing machinery and equipment to keep the property in an ordinarily efficient working order do not qualify for exclusion under R.S. 47:301(3)(i). Because neither the labor nor the materials used in these repairs are depreciable for federal income tax purposes, charges for these items cannot be excluded from tax.

vi. Charges for labor and materials utilized during work that is classified as a capital improvement under Internal Revenue Service Regulations may be excluded as follows:

(a). Charges for labor performed on qualifying manufacturing machinery and equipment that is movable property at the time of the capital improvement are excluded from tax. The vendor that provides the labor is allowed to treat the materials used as purchased for resale. All materials that are incorporated into qualifying machinery and equipment during the capital improvement qualify for exclusion from tax.

(b). Materials incorporated into qualifying manufacturing machinery and equipment that is immovable property at the time of the capital improvement are eligible for exclusion as follows:

(i). In instances when a manufacturer purchases materials that will become a component part of qualifying machinery or equipment, the materials are excluded from tax.

(ii). A vendor’s purchases of materials that will become a component part of qualifying machinery or equipment are excluded from tax if the vendor has been designated as a mandatory of a manufacturer. The vendor must obtain the manufacturer’s exclusion Form R-1071 and provide it, with a copy of the contract of mandate or the Department’s Form R-1072, to the seller at the time of purchase. Manufacturers that supply this form to their mandataries must maintain a schedule of the *tangible personal property* used in these capital improvements.

(c). Purchases of spare machinery and equipment, such as compressors, pumps, and valves, qualify for the exclusion provided these items satisfy the definition of machinery and equipment provided in R.S. 47:301(3)(i). Spare machinery and equipment, such as bolts, nuts, gaskets, oil, etc., which cannot be depreciated for federal income tax purposes, do not qualify for the exclusion.

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Lease or Rental—

a. – b.vii. ...

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viii. the *lease or rental* of machinery and equipment used predominantly and directly in the process of manufacturing *tangible personal property* for sale or used directly in the production, processing, and storing of food, fiber, or timber for sale. The meanings of “manufacturing,” “used predominantly,” and “used directly” provided in LAC 61:I.4301.C.*Cost Price*.h apply. This exclusion applies to state sales tax and local sales taxes if the political subdivision has adopted this exclusion by ordinance.

c. – d. ...

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Sales Price—

a. i. – ix. ...

x. R.S. 47:301(13)(k) excludes machinery and equipment used predominantly and directly in the process of manufacturing *tangible personal property* for sale or used directly in the production, processing, and storing of food, fiber, or timber for sale from the *sales price*. For purposes of *sales price*, the interpretations provided under LAC 61:I.4301.C.*Cost Price*.h will apply. This exclusion applies to state sales tax and local sales taxes if the political subdivision has adopted this exclusion by ordinance. To determine *sales price* subject to tax, this exclusion is deducted from the total amount charged to the customer after allowances for trade-ins and before any exemptions provided elsewhere in the law.

b.i. – ii. ...

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AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:2554 (December 2002), LR 28:2556 (December 2002), LR 29:186 (February 2003), LR 30: _____.