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Manufacturing

Sec. 12-412 (18)-1. Materials, tools and fuel used directly in an industrial plant in the actual fabrication of finished products to be sold

(a) **In general.** Section 12-412 (18) of the general statutes exempts from the sales and use taxes the sale, and the storage, use or other consumption, of materials, tools and fuel used directly in an industrial plant in the actual fabrication of finished products to be sold. Subsection (b) of this regulation defines the term “materials” and provides examples of when such materials are “used directly” in an industrial plant in the actual fabrication of finished products to be sold. Subsection (c) of this regulation defines the term “tools” and provides examples of when such tools are “used directly” in an industrial plant in the actual fabrication of finished products to be sold. Subsection (d) of this regulation defines the term “fuel” and provides examples of when such fuel is “used directly” in an industrial plant in the actual fabrication of finished products to be sold. Subsection (e) of this regulation defines the term “industrial plant.” Subsection (f) of this regulation defines the term “actual fabrication.” Subsection (g) prescribes the procedure to be followed in claiming the exemption from sales and use taxes provided by said section 12-412 (18). The term “predominantly” when used in this regulation means more than fifty percent. While this regulation pertains, for purposes of supplementary interpretation, as the phrase is used in section 12-2 of the general statutes, to said section 12-412 (18), the promulgation of this regulation is authorized by section 12-426 (1) of the general statutes.

(b) Materials

(1) Section 12-412 (18) of the general statutes exempts from the sales and use taxes the sale, and the storage, use or other consumption, of materials used directly in an industrial plant in the actual fabrication of finished products to be sold. This regulation addresses whether materials are “used directly” in an industrial plant in the actual fabrication of finished products to be sold. As used in this regulation, the term “materials” means such items as lubricants, chemicals, solvents, anodes, catalysts, dyes and refrigerants. Said section 12-412 (18) also exempts from the sales and use taxes the sale, and the storage, use or other consumption, of materials that become an ingredient or component part of tangible personal property to be sold; however, this regulation does not address whether materials become an ingredient or component part of tangible personal property to be sold.

(2) In determining whether materials are used directly in an industrial plant in the actual fabrication of finished products to be sold, the commissioner will examine the facts and circumstances of each case, using the following principles as guidelines:

(A) Materials that are used to clean or lubricate machinery that is used directly in the actual fabrication of finished products to be sold are used directly in such actual fabrication.

(B) Materials that are used to remove impurities from raw materials being fabricated into finished products to be sold are used directly in such actual fabrication.

(C) Materials that are used to make molds into which molten steel will be poured to make parts being fabricated into finished products to be sold are used directly in such actual fabrication.

(3) Example: Company C, a manufacturer of widgets sold by it in the regular course of business, purchases (1) grease which will be used to lubricate assembly line machinery; (2) solvent which will be used to clean assembly line machinery; (3) muffles which will be used inside a blast furnace (used in the manufacture of

steel for widgets) to reduce atmospheric volume; (4) chemicals which will be used to remove impurities from raw materials being fabricated into widgets; and (5) safety goggles which will be worn by assembly line personnel. The materials used for the purposes described in (1), (2), (3) and (4) are exempt from tax; and the materials used for the purpose described in (5) are subject to tax.

(c) Tools

(1) As used in this regulation, the term “tools” means hand tools, such as hammers, chisels, wrenches, screwdrivers and saws. The term “tools” includes tools, such as drills, cutters, reamers, taps, dies, chucks, picks, punches, honing stones and grinding wheels, that are used in the operation of machinery. The term “tools” also includes accessory tools, such as jigs, chucks, holders, die sets, straighteners, collets, frames, shoes, adapters, quills and inserts, that hold or align a piece of work being fabricated or a tool used in actual fabrication. The term “tools” also includes nondestructive testing devices, other than machinery or component parts thereof.

(2) In determining whether tools are used directly in an industrial plant in the actual fabrication of finished products to be sold, the commissioner will examine the facts and circumstances of each case, using the following principles as guidelines:

(A) A tool, such as a drill, cutter or tap, that comes into direct contact with, and is used in the fabrication of, finished products to be sold is used directly in such actual fabrication.

(B) A tool, such as a chuck, that has a direct effect on finished products to be sold by holding or aligning tools, such as picks, reamers or punches, that come into direct contact with raw materials or pieces of work being fabricated into such products is used directly in such actual fabrication.

(C) A tool, such as a jig or collet, that has a direct effect on finished products to be sold by holding or aligning pieces of work that are being fabricated into such products is used directly in such actual fabrication.

(D) A tool, such as hammer, that adjusts or repairs machinery used directly in the actual fabrication of finished products to be sold is used directly in such actual fabrication.

(E) A tool that is used for checking the performance or output of machinery used directly in the actual fabrication of finished products to be sold is used directly in such actual fabrication.

(F) A tool making other tools that will be used directly in the actual fabrication of finished products to be sold is not used directly in such actual fabrication.

(G) A tool that is used to inspect finished products to be sold after their actual fabrication is completed (and no further refabrication is practicable) is not used directly in such actual fabrication.

(3) Example: Company B, a manufacturer of widgets sold by it in the regular course of business, purchases hammers which will be used (1) in the actual fabrication of widgets, i.e. the hammers will be widget assembly line tools and will come in direct contact with the widgets on the assembly line; (2) in the adjustment of widget assembly line machinery during actual fabrication; (3) in the repair of widget assembly line machinery; and (4) in the process of creating a prototype not intended to be sold. Company B also purchases micrometers which will be used (5) to measure the widgets at different stages on the assembly line; and (6) to inspect the finished widgets when no refabrication is practicable. The tools used for the purposes described in (1), (2), (3) and (5) are exempt from tax; and the tools used only for the purposes described in (4) and (6) are subject to tax.

(d) **Fuel.**

(1) As used in this regulation, the term “fuel” means a substance generally regarded as fuel, such as coal, gas or oil. Section 12-412 (18) of the general statutes exempts from the sales and use taxes the sale, and the storage, use or other consumption, of fuel used directly in an industrial plant in the actual fabrication of finished products to be sold. Said section 12-412 (18) also exempts from the sales and use taxes the sale, and the storage, use or other consumption, of fuel used directly in the furnishing of power to an industrial manufacturing plant or in furnishing gas, water, steam or electricity, when delivered to consumers through mains, lines, pipes or bottles. While this regulation addresses whether fuel is “used directly” in an industrial plant in the actual fabrication of finished products to be sold and whether fuel is “used directly” in the furnishing of power to an industrial manufacturing plant, it does not address whether fuel is “used directly” in furnishing gas, water, steam or electricity to consumers.

(2) In determining whether fuel is used directly in an industrial plant in the actual fabrication of finished products to be sold, the commissioner will examine the facts and circumstances of each case, using the following principles as guidelines:

(A) Fuel that is used to provide a temperature or pressure required in the process of fabrication of finished products to be sold is used directly in such actual fabrication.

(B) Fuel that is used to heat or cool an industrial plant, where heating or cooling has an incidental effect, if any, on the process of fabrication of finished products to be sold and is primarily for the comfort of workers at the plant, is not used directly in such actual fabrication.

(3) In determining whether fuel is used directly in the furnishing of power to an industrial manufacturing plant, the commissioner will examine the facts and circumstances of each case, using the following principles as guidelines:

(A) Fuel that is used in an industrial manufacturing plant to generate power for machinery used directly in actual fabrication of finished products to be sold is used directly in the furnishing of power to an industrial manufacturing plant.

(B) Fuel that is used in an industrial manufacturing plant to generate power for machinery not used directly in actual fabrication of finished products to be sold is not used directly in the furnishing of power to an industrial manufacturing plant.

(C) “Industrial manufacturing plant” means an industrial plant, as defined in subsection (e) of this regulation.

(e) **Industrial plant**

(1) As used in section 12-412 (18) of the general statutes and in this regulation, the term “industrial plant” or “industrial manufacturing plant” means an establishment which has actual fabrication or the manufacture of finished products to be sold as its predominant purpose and that is generally recognized as such. In determining whether an establishment has such fabrication or manufacture as its predominant purpose, the commissioner will examine the facts and circumstances of each case, using the following principles as guidelines:

(A) If the floor space of the establishment is predominantly devoted to actual fabrication or the manufacture of finished products to be sold, it is more likely to be an industrial plant. Floor space of the establishment devoted to research and development preliminary to such process will be considered to be floor space devoted to such process.

(B) If the number of employees working at the establishment are predominantly working in actual fabrication or the manufacture of finished products to be sold, it is more likely to be an industrial plant. The number of employees working at the

establishment at research and development preliminary to such process will be considered to be employees working at such process.

(C) If the wages and salaries of employees working at the establishment are predominantly wages and salaries of employees working in actual fabrication or the manufacture of finished products to be sold, it is more likely to be an industrial plant. The wages and salaries of employees working at the establishment at research and development preliminary to such process will be considered to be wages and salaries of employees working at such process.

(D) If the costs of operating the establishment are predominantly attributable to the costs of actual fabrication or the manufacture of finished products to be sold, it is more likely to be an industrial plant. The operating costs of the establishment attributable to research and development preliminary to such process will be considered to be operating costs of such process.

(E) If sales made at the establishment are predominantly of products fabricated or manufactured elsewhere, it is more likely that the actual fabrication or manufacturing aspect of the establishment is incidental to its retail aspect, and it is less likely to be an industrial plant.

(2) The term “industrial plant” does not encompass cottage industries. The term “cottage industries” means establishments at which fabrication takes place in a residential dwelling or in a building on the grounds of a residential dwelling. If an establishment is not located in an area zoned as commercial or industrial, or if residential use is among the uses being made of the establishment, it is less likely to be an industrial plant.

(f) **Actual fabrication.** As used in this regulation, the term “actual fabrication” means an operation or an integrated series of operations that alter or modify a manufactured product or raw materials, whether or not a change in the identity of the product or materials occurs. The transformation cannot be a mere natural process, whether or not expedited by the use of human skill or labor or machinery. In determining whether a process constitutes actual fabrication, the commissioner will examine the facts and circumstances of each case, using the following principles as guidelines:

(1) The process must occur at an industrial plant.

(2) The finished products of fabrication must be intended for sale, whether by the fabricator or by another on whose behalf the fabricator has undertaken the fabrication.

(3) The process must be commonly regarded as fabrication. By way of example and not limitation, fabrication includes assembling, cutting, perforating, painting, coating and similar operations. Where materials, tools or fuel are used directly in an industrial plant in the actual fabrication of a finished product to be sold, the sale, and the storage, use or other consumption, of such materials, tools or fuel will be exempt from the sales and use taxes.

(4) Fabrication involves the alteration or modification of a manufactured product or raw materials, whether or not a change in the identity of the product or materials occurs. Manufacturing involves the substantial transformation of the form, composition or character of raw or finished materials into a product possessing a new name, nature and use. A process that is regarded as manufacturing will be regarded as fabrication, but a process that is regarded as fabrication will not necessarily be regarded as manufacturing. By way of example and not limitation, cutting, painting and perforating are processes that are regarded as fabrication, but, when taken alone, because they do not substantially transform the form, composition or character of raw or finished materials, they are not regarded as manufacturing. The sale, and

the storage, use or other consumption, of machinery is exempt from sales and use taxes only if such machinery is used directly in a manufacturing production process as defined in section 12-412 (34)-1 of the regulations.

(g) **Procedure**

(1) The commissioner shall prescribe and furnish an exemption certificate that shall be completed and issued by the purchaser of materials, fuel or tools to the retailer thereof where the exemption from sales and use taxes provided by section 12-412 (18) of the general statutes is claimed to be applicable.

(2) The exemption certificate referred to in subdivision (1) of this subsection shall relieve the retailer from the burden of proving that the sale, and the storage, use or other consumption, of the materials, fuel or tools were not subject to sales and use taxes only if taken in good faith from a person who is engaged in the actual fabrication of finished products to be sold. The good faith of the retailer will be questioned if such retailer has knowledge of facts that give rise to a reasonable inference that the purchaser is not engaged in such fabrication or that the materials, fuel or tools will not be used directly in the actual fabrication of finished products to be sold.

(3) If the materials, fuel or tools are not used directly in the actual fabrication of finished products to be sold by a purchaser who issues an exemption certificate in good faith, then the use shall be deemed a retail sale by the purchaser as of the time that the materials, fuel or tools are first used by the purchaser, and the cost of the materials, fuel or tools to the purchaser shall be deemed the gross receipts from a retail sale by such purchaser.

(Effective April 23, 1991)