SRMA: Manufacturing Exemptions in FL "Navigating the Black and White to Argue the Gray!"

Thursday, May 19, 2022

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Agenda:

1. General sales tax exemptions for manufacturers in Florida:
    - Machinery and equipment
    - Inputs
    - Repairs
    - Utilities
2. Claiming the exemptions
3. Refund opportunities
4. Other sales and use tax considerations

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General Sales Tax Exemptions for Manufacturers in Florida

- Machinery and Equipment
  - Standard manufacturing equipment
  - Nontraditional manufacturing equipment
  - Equipment used in Research & Development
  - Pollution control equipment
- Inputs
- Repairs
- Utilities

Machinery and Equipment

- Essentially two applicable categories for manufacturing:
  - NAICS based (traditional manufacturers)
  - Nontraditional (outside NAICS codes)
- Research and development
- Pollution control

Machinery and Equipment- Traditional Manufacturers

- "Eligible manufacturing business" means any business whose **primary** business activity at the location where the **industrial machinery and equipment** is located is within the industries classified under **NAICS codes 31, 32, 33, 112511, and 423930**
- "NAICS" means those classifications contained in the **North American Industry Classification System, as published in 2007** by the Office of Management and Budget, Executive Office of the President.
- "Primary business activity" means an activity **representing more than 50 percent of the activities conducted at the location** where the industrial machinery and equipment or postharvest machinery and equipment is located.

Machinery and Equipment- Nontraditional Manufacturers

- Industrial machinery and equipment purchased for use in **new businesses** that **manufacture, process, compound, or produce for sale items of tangible personal property** at **fixed locations**.
- Industrial machinery and equipment purchased for use in expanding manufacturing facilities or plant units **which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations** to the extent such items are used to increase the productive output of such expanded facility or business **by not less than 5 percent**. The 5 percent is measured by looking at the total production levels of the manufacturing process over 12 months compared to the preceding 12 months.
- Examples of what does/does not qualify- Fla. Admin. Code Ann. § 12A-1.096

Machinery and Equipment- Nontraditional Manufacturers

- Machinery and equipment purchased or used by any of the following businesses are not eligible for exemption:
  - electric utility companies;
  - communications companies;
  - oil or gas exploration or production operations;
  - publishing firms that do not export at least 50% of their finished product out of Florida;
  - any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation; and
  - any firm that does not manufacture, process, compound, or produce for sale items of tangible personal property

Machinery and Equipment.

- The main difference between the exemptions:
  - Traditional manufacturing- driven by NAICS code and assuming the business fits within the appropriate NAICS code, there is no additional input needed from the state with regards to the exemption. Support for the exemption is an affidavit provided to the vendor.
  - Nontraditional manufacturing- must be applied for prior to purchasing the equipment. If state agrees, they will issue a temporary exemption for purposes of purchasing the specific items on the request application (Form DR-1214).
    - More caveats to the exemption (ex. new product, expanding production, etc.)
    - dr1214.pdf (floridarevenue.com)

Machinery and Equipment- Research & Development

- Machinery and equipment used **predominantly** for research and development are exempt from the tax. Predominantly means at least 50% of the time.
- "Research and development" means research with one of the following as its ultimate goal:
  - research devoted to a scientific or technical field;
  - progressing the knowledge or technology in a scientific or technical field;
  - developing a new product (the resale of the product is not required);
  - bettering an existing product (the resale of the product is not required);
  - developing a new rationale or use of an existing product (the resale of the development is not required); or
  - developing and designing prototypes (the resale of the prototype is not required).
- Research and development **does not include** ordinary testing or inspection of materials or products for quality control, market research, efficiency surveys, advertising and promotions or consumer surveys.

Machinery and Equipment- Research & Development

- “Machinery and equipment” includes, **but is not limited to**, molds, dies, machine tooling, other appurtenances or accessories to machinery and equipment, testing and measuring equipment, test beds, computers, and software, whether purchased or self-fabricated, and, if self-fabricated, includes materials and labor for design, fabrication, and assembly.

Machinery and Equipment- Pollution Control Equipment

- A sales tax exemption applies to any facility, device, fixture, equipment, machinery, specialty chemical, or bioaugmentation product used primarily for the control or abatement of pollution or contaminants in manufacturing, processing, compounding, or producing for sale items of tangible personal property at a fixed location, or any structure, machinery, or equipment installed in the reconstruction or replacement of such facility, device, fixture, equipment, or machinery.
- To qualify, such facility, device, fixture, equipment, structure, specialty chemical, or bioaugmentation product must be used, installed, or constructed **to meet a law implemented by, or a condition of a permit issued by, the Department of Environmental Protection**

Repair

- There is an exemption from the tax imposed on all labor charges for the repair of, and parts and materials used in the **repair of and incorporated into, industrial machinery and equipment**
- This exemption applies only to industries classified under **SIC Industry Major Group Numbers** 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, and 39 and Industry Group Number 212.

Ingredients and Component Parts

- The sale of tangible personal property to a dealer when such property **will be incorporated** as a material, ingredient, or component part of tangible personal property that is **being produced for sale** by manufacturing, processing, or compounding.
- The sale, use, storage, or consumption of materials, containers, labels, sacks, bags, or similar items that are intended to accompany a product sold to a customer and to be used one time only for packaging tangible personal property for sale is not subject to tax when:
    - delivery of the product would be impracticable because of the character of the contents; or
    - such items are used for the convenience of the customer.

Utilities - Electricity

- Charges for electricity or steam used to operate machinery and equipment in this state for manufacturing or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment are exempt from sales tax.
  - If **75 percent or more** of the electricity is used to operate qualifying machinery or equipment, **100 percent of the charges** for electricity or steam are exempt.
  - If **less than 75 percent but 50 percent or more** of the electricity or steam is used to operate qualifying machinery or equipment, **50 percent of the charges** for electricity or steam are exempt.
  - If **less than 50 percent** of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, **none of the charges** for electricity or steam used at the fixed location are exempt.
- This exemption applies only to industries classified under SIC Industry Major Group Numbers 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 and Industry Group Number 212 and industries classified under NAICS code 423930. As used in this paragraph, “SIC” means those classifications contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

Key Definitions

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“Fixed Location”

- “Fixed location” means a location or plant site that is used, or intended to be used, for an extended or indefinite period of time for manufacturing, processing, compounding, or producing items of tangible personal property for sale.
- The term also includes a location where a portable plant is set up for a period of not less than six months in a stationary manner so as to perform the same industrial manufacturing, processing, compounding or production process that could be performed at a permanent location or plant site.
- Facilities or plant units that are within the same building, or that are on the same parcel of land if not contained in a building, are considered to be one fixed location.

“Manufacturing”

- “Manufacture, process, compound, or produce for sale” means the various industrial operations of a business where **raw materials will be put through a series of steps to make an item of tangible personal property that will be sold**. The industrial operations must bring about a change in the composition or physical nature of the raw materials.
- Where materials are merely repackaged or redistributed, those operations are not manufacturing, processing, compounding, or producing for sale.
- The business performing the manufacturing, processing, compounding, or production process may or may not own the raw materials.
- However, the phrase “manufacture, process, compound, or produce for sale” does not include fabrication, alteration, modification, cleaning, or repair services performed on items of tangible personal property belonging to others where such items of tangible personal property are not for sale.

“Manufacturing” continued

- “Production process” or “production line” means those industrial activities beginning when raw materials are delivered to the new or expanding business' fixed location and generally ending when the items of tangible personal property have been packaged for sale or are in saleable form if packaging is not done.
- The production process or production line language generally applies to the non-traditional exemption.

"Industrial Machinery and Equipment"

- Tangible personal property or other property that has a depreciable life of three years or more;
- Is used as an **integral** part in the manufacturing, processing, compounding, or production of tangible personal property for sale.
- A building and its structural components are usually not included in the definition of industrial machinery and equipment **unless the building or structural component is so closely related to the industrial machinery and equipment unless specifically designed for the machines they hold**.
  - The term includes parts and accessories for industrial machinery and equipment only to the extent the parts and accessories are purchased prior to the date the machinery and equipment are placed in service.
- What is the significance of "**integral**"?
  - "Integral to" means that the machinery and equipment provides a significant function within the production process, such that the production process **could not be complete without that machinery and equipment**.

Generally Taxable Items that are NOT Exempt

- Items used and consumed or dissipated during manufacturing are **generally** taxable. Some examples include:
  - Sandpaper, grinding wheels, saw blades, drills and other cutting tools
  - Detergents and industrial chemicals used in cleaning
  - Cutting oils
  - Cutters, tools, jigs, hobs, etc.
  - Calcium Chloride for refrigeration
  - Chlorine when used in cooling systems
  - Molding sand
  - Commercial salt
  - Welding flux

Claiming the Exemption

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Traditional Manufacturing Equipment Affidavit

SUGGESTED EXEMPTION CERTIFICATE
FOR PURCHASES OF INDUSTRIAL MACHINERY AND EQUIPMENT,
PARTS, AND ACCESSORIES

[Note: This certificate may be a separate document attached to a purchase order, or may be incorporated within a purchase order itself.]

I certify that the industrial machinery and equipment, parts, or accessories purchased on or after _______________ (Date) from ________________________________ (Vendor's Name) are exempt from sales tax under paragraph 212.08(7)(kkk), F.S.

The machinery and equipment will be used by an eligible manufacturing business at a fixed location in Florida at ____ (Street Address and City), Florida, to manufacture, process, compound, or produce items of tangible personal property for sale. The parts and accessories purchased for the machinery and equipment will be used at such location and are purchased prior to the date the machinery and equipment are placed into service.

I certify that _____________________________________ (Name of Purchasing Business) is a business establishment contained within an industry classified under NAICS codes 31, 32, or 33, as contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

I understand that if I use the machinery, equipment, parts, or accessories for any nonexempt purpose, I must pay tax on the purchase price directly to the Florida Department of Revenue.

I understand that if I fraudulently issue this Certificate to evade payment of sales tax, I will be liable for payment of the sales tax, plus a penalty of 200% of the tax, and may be subject to conviction of a third degree felony.

_________________________________	_________________________
Purchaser's Name (Print or Type)	Title
_________________________________	
Purchaser's Signature	
_________________________________	_________________________
Florida Sales Tax Number	Federal Employer Identification
_________________________________	_________________________
Date	Telephone Number

This certificate relieves the vendor from the responsibility of collecting tax on exempt sales amounts. The Department will look solely to the purchaser for recovery of tax if the purchaser was not entitled to the exemption.

Form to be retained in vendor's records.
Do not send to the Florida Department of Revenue.

Non-Traditional Manufacturing Equipment Application DR-1214

FLORIDA DEPARTMENT OF REVENUE

Application for Temporary Tax Exemption Permit

DR-1214
R. 01/16
Rule 12A-1.097
Florida Administrative Code
Effective 01/16

SECTION I

This application is to be completed for each **project** for which exemption from Florida sales and/or use tax is claimed pursuant to section 212.08(5)(b), Florida Statutes, and Rule 12A-1.096, Florida Administrative Code. See reverse side for mailing adress.

EXEMPTION CLAIMED AS: ☐ New Business ☐ Expanding Business ☐ Spaceport Activity ☐ Mining Activity

1. (a) Business Name: _____
   (b) Mailing Address: _____
   City, State, ZIP: _____
   (c) Website address: _____
   (d) Florida Sales Tax Number for location listed in (2)(a) (required): _____
   (e) FEIN: _____
   (f) Telephone Number: (____) _____ Fax Number:(____) _____
   (g) Name, address, position, and telephone number of person or persons to be contacted regarding this project. (Form DR-835, *Power of Attorney*, must be submitted if not an officer or employee of the business.)
2. (a) Project Location (Address where the machinery and equipment will be or has been installed):
   (b) Did you purchase or buy out another business at the location in 2.(a)? ☐ Yes ☐ No If yes, when? _____
   (c) Project Description (Explain in full detail the purpose and scope of work to be accomplished by the project.):
   (Attach additional sheet, if necessary)
   (d) Is any qualifying machinery and equipment going to be leased? ☐ Yes ☐ No
   If yes, will this be a: ☐ Capital Lease ☐ Operating Lease Please provide a complete, legible copy of the lease (If available).
   (e) List the types of the major machinery and equipment that may be purchased or leased for the project. (**DO NOT** file a separate application for each item of machinery and equipment to be purchased, if they are for the same project.)
   (Attach additional sheet, if necessary)
   (f) Total cost of the **machinery and equipment** to be purchased or leased for the project: _____
   (g) Total cost of the entire **project**: _____
3. (a) What is the product or item that will be made for sale by the machinery and equipment listed at the project location?
   (b) Is this product or a similar product already being made at the project location in 2.(a)? ☐ Yes ☐ No
   (c) Is this product or a similar product already being made at another Florida location of this company? ☐ Yes ☐ No If yes, provide the location or locations: _____
   (d) Will production of the product in 3.(a) be closed down at a location listed in 3.(c), or has production been closed down? ☐ Yes ☐ No If yes, when will or did production at that location stop? _____
   (e) What type of businesses or customers will be purchasing the product in 3.(a)? _____

SECTION II

If claiming exemption as a **new business**, please answer the following:

1. Has this business previously applied for this exemption? If so, when? _____
2. (a) Approximate Beginning and Completion Date of Construction (if construction is necessary):
   Beginning Date: _____ Completion Date: _____
   (b) Approximate Beginning Date of Machinery and Equipment Purchases: _____
   (c) Estimated Start Date of Production: _____

SECTION III

If claiming exemption as an **expanding** business, please answer the following:

1. Has this business previously applied for this exemption? If so, when? _____
2. (a) Approximate Beginning and Completion Date of Construction (if construction is necessary):
   Beginning Date: _____ Completion Date: _____
   (b) Approximate Beginning Date of Installation of Machinery and Equipment Purchases: _____
   (c) Estimated Date of Completion of Machinery and Equipment Installation: _____
3. Please answer the following regarding productive output for your expansion project.
   (a) Specfy the unit of measure that you will use to measure your increase in productive output; i.e., pounds, tons, pieces, gallons, cubic yards, sheets, etc. (**Selling price or labor hours cannot be used.**) _____
   (b) What is your expected percent increase in productive output following the expansion project? _____ %

ADDITIONAL REMARKS

Important: A qualifying business entity must file this form whether it seeks to make purchases of machinery and equipment tax-exempt or seeks a refund of previously paid taxes. To avoid any delays in obtaining the permit or a refund, the application must be fully completed and returned to the Department of Revenue. A business that seeks a refund of previously paid tax **must** file an *Application for Refund - Sales and Use Tax* (Form DR-26S) within the applicable statutory limits. See s. 215.26(2), F.S. **For additional information, call (850) 617-8346.**

Mail this form to:
DIRECTOR
TECHNICAL ASSISTANCE AND DISPUTE RESOLUTION
FLORIDA DEPARTMENT OF REVENUE
PO BOX 7443
TALLAHASSEE FL 32314-7443

Signature _____ Date _____
Print Name _____
Title _____

For Florida Department of Revenue use ONLY — Do not write in this space.

The above project is: (check one)
☐ Approved as a new business
☐ Approved as an expanding business
☐ Approved as a spaceport activity
☐ Approved as a mining activity
☐ Not approved for the exemption

Permit _____ From _____ To
☐ Permit Number _____
☐ Refund ☐ No Permit Issued

Business Name: _____ (Signature of Authorized Agent) _____ Date
Sales Tax Number: _____

R&D Affidavit

AFFIDAVIT

MACHINERY AND EQUIPMENT USED IN RESEARCH OR DEVELOPMENT

I, the undersigned individual, hereby declare that the purchase(s) or lease(s) of machinery and equipment, including materials and labor used in the self-fabrication of machinery and equipment, on or after ________ (date) from ________ (Selling Dealer's Business Name), will be used predominantly in research or development activities, as provided in Section 212.08(18), F.S.

These research or development activities are located at:

____

(Street)

____

(City and State)

I understand that if I fraudulently issue this affidavit to evade the payment of Florida sales tax, I will be liable for payment of the tax plus a penalty of 200% of the tax and be subject to conviction of a third degree felony.

Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true to the best of my knowledge and belief.

____

Purchaser's Name (Print or Type)

____

Signature and Title

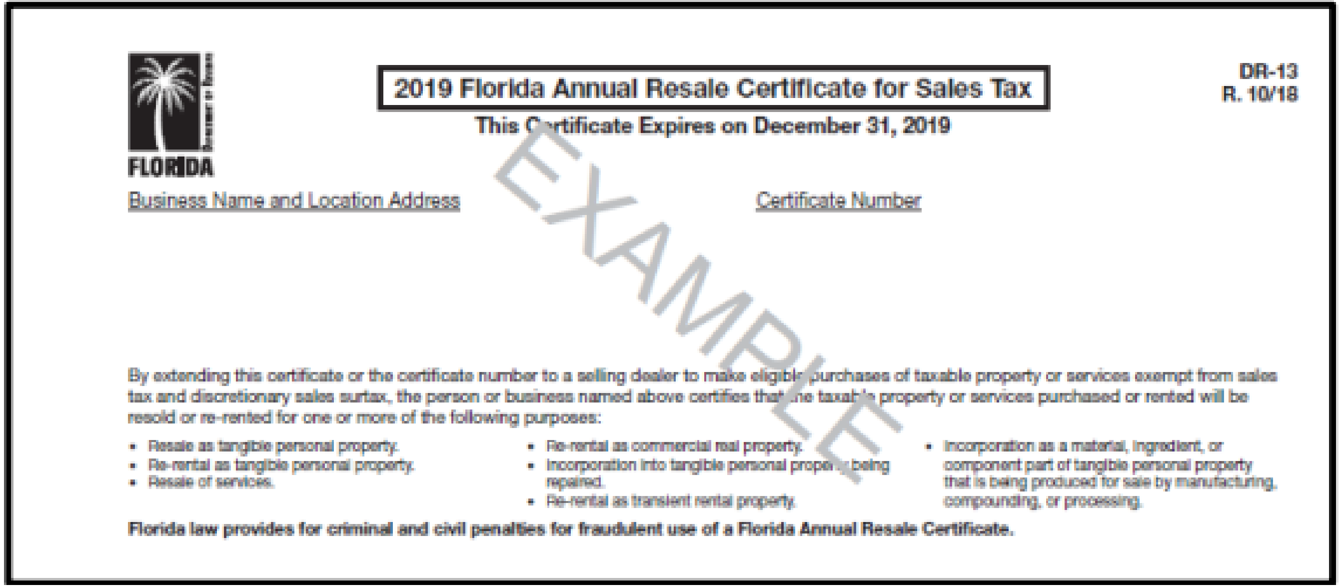
____

Date

(f) Instead of furnishing an exemption certificate, as provided in paragraph (d), or an affidavit, as provided in paragraph (e), any purchaser who holds a valid Sales and Use Tax Direct Pay Permit, as provided in Rule 12A-1.0911, F.A.C., may extend a copy of the permit to the selling dealer to make purchases tax-exempt under this subsection.

(g) When a prototype or product of research or development is used by the developer for any purpose other than research or development, including being offered for sale, it is subject to tax.

Inputs, Packaging and Pallets – Sale for Resale



FLORIDA

2019 Florida Annual Resale Certificate for Sales Tax

This Certificate Expires on December 31, 2019

DR-13
R. 10/18

EXAMPLE

Business Name and Location Address

Certificate Number

By extending this certificate or the certificate number to a selling dealer to make eligible purchases of taxable property or services exempt from sales tax and discretionary sales surtax, the person or business named above certifies that the taxable property or services purchased or rented will be resold or re-rented for one or more of the following purposes:

- Resale as tangible personal property.
- Re-rental as tangible personal property.
- Resale of services.
- Re-rental as commercial real property.
- Incorporation into tangible personal property being repaired.
- Re-rental as transient rental property.
- Incorporation as a material, ingredient, or component part of tangible personal property that is being produced for sale by manufacturing, compounding, or processing.

Florida law provides for criminal and civil penalties for fraudulent use of a Florida Annual Resale Certificate.

Utilities Affidavit

ELECTRICITY OR STEAM USED TO MANUFACTURE ITEMS
FOR SALE OR USE ON OR AFTER JULY 1, 2000

____________________ (Purchaser's Name) certifies that the electricity or steam purchased on or after ________________under the following account number(s) is exempt from sales tax, because such electricity or steam will be used at a fixed location to operate machinery and equipment that is used to manufacture, process, compound, produce, or prepare for shipment items of tangible personal property for sale, or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations.

____________________ (Purchaser's Name) further certifies that:

a) its four-digit SIC Industry Number is listed below, and this number is classified under SIC Industry Major Group Number10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, or 39, or under Industry Group Number 212 as contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President; and,

b) 75% or more of the electricity or steam used at a fixed location is used to operate machinery and equipment as described above, and the location qualifies for the 100% exemption, or

c) more than 50% but less than 75% of the electricity or steam used at a fixed location is used to operate machinery and equipment as described above, and the location qualifies for a 50% exemption.

SIC INDUSTRY NUMBER ____________________

Address of Exempt Locations	Utility or Steam Account Numbers	Amount of Exemption Claimed (Circle One)
		100% 50%
		100% 50%
		100% 50%

The undersigned understands that if such purchases of electricity or steam do not qualify for exemption, the undersigned will be subject to sales and use tax, interest, and penalties. Purchaser further understands that when any person shall fraudulently, for the purpose of evading tax, issue to a vendor or to any agent of the state a certificate or statement in writing in which he or she claims exemption from the sales tax, such person, in addition to being liable for payment of the tax plus a mandatory penalty of 200% of the tax, shall be liable for fine and punishment provided by law for conviction of a misdemeanor of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

____
Purchaser's Name (Print or Type)

____
Date

____
Signature & Title

____
Florida Sales Tax Number

____
Federal Employer Identification Number (FEI) or Social Security Number

____
Telephone Number

Refund Opportunities

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Claiming a Refund

- The general statue of limitations is 36 months from when the tax is due
- Exemptions are to be construed narrowly
- Could depend on how the tax was remitted:
    - If directly remitted as use tax
    - If remitted as a sales tax to vendors-assignment of rights is needed (Form DR-26A)
- Florida Form DR-26

Other Considerations

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Sales Tax Nexus Considerations

- If your business is selling to customers out of state, you are potentially creating economic nexus with those states.
- Economic nexus will allow those other states to begin taxing you on your retail sales of tangible personal property and manufactured goods.
- Economic nexus is generally $100K of gross receipts or 200 transactions in the state.

Questions?

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