

## 5703-9-21 Sales and use tax; manufacturing

(A) For purposes of this rule, all purchases of tangible personal property are taxable, except those in which the purpose of the consumer is to incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining or to use the thing transferred, as described in section 5739.011 of the Revised Code and this rule, primarily in a manufacturing operation to produce tangible personal property for sale.

This means that a person who buys tangible personal property and will make it a part or constituent of something that he is manufacturing for sale, or buys something that is used in a manufacturing operation, does not have to pay sales or use tax on the thing purchased.

Tangible personal property purchased by a manufacturer as a component or constituent of a product to be manufactured for sale is excepted from sales and use tax. The purchase of all such tangible personal property is not taxable, even though a portion will be lost or removed as waste or for testing. The manufacturer must pay use tax on the price, as defined in division (G) of section 5741.01 of the Revised Code, of any completed product not sold and stored or used by the manufacturer in a taxable manner, except such product that is consumed in testing or is disposed of because it is defective or otherwise unsalable.

(B)(1) "Manufacturing operation" means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending or otherwise committing such materials or parts to the manufacturing process. "Manufacturing operation" does not include packaging.

Tangible personal property purchased by a manufacturer for use in packaging is taxable unless exempted pursuant to division (B)(15) of section 5739.02 of the Revised Code.

Any business whose sole activity is a process that does not include conversion or alteration of tangible personal property into a different state or form is not a manufacturer and is not covered by this rule.

The manufacturing operation begins when the raw materials or parts are committed to the manufacturing process. If the raw materials or parts are stored after being received at the manufacturing facility, the raw materials or parts are not committed until after they are removed from such initial storage. The point of commitment is where the materials handling from such initial storage has ceased or the point where the materials or parts have been mixed, measured, blended, heated, cleaned, or otherwise treated or prepared for the manufacturing process, whichever first occurs. If the raw materials or parts are not stored, they are committed at the point where materials handling from the place of receipt ceases or where they are mixed, measured, blended, heated, cleaned, or otherwise treated or prepared for the manufacturing process, whichever first occurs. The commitment of the materials or parts need not be irrevocable, but they must have reached the point, after materials handling from initial storage has ceased, where they normally will be utilized within a short period of time. The point of commitment frequently will be different for particular materials and parts, since they are introduced at different times in the manufacturing operation.

Things used in any activity, including movement or storage of the materials or parts before they are committed are taxable.

See examples 1, 2, 3, 4, 6, 9, 40, 61, 63, and 64.

### Example 2

A manufacturer of concrete owns a ready-mix batch plant. Cement and aggregate are purchased from and delivered by outside suppliers. Cement is removed from delivery trailers by a vacuum system, which deposits the cement in a storage silo. Aggregate of particular sizes is delivered by dump trucks. The aggregate is stored in piles, segregated by size. As needed, cement is removed from the silo by screw conveyor and batched into a mixing drum. Aggregate is moved from

the proper pile(s) by a front loader, which deposits the aggregate on a belt conveyor which lifts the stone up and into the mixing drum. Water is added into the drum and mixing commences. After a short time, concrete is discharged into mixer trucks. The mixing drums on the trucks operate via power take off from the truck engines. The concrete continues to be mixed as the trucks deliver it to the customer. One hundred per cent of this batch plant's output is sold to others by the manufacturer.

\* The cement and water are committed to the manufacturing operation at the mixing drum. The cement vacuum system, storage silo, and screw conveyor are taxable.

\* The aggregate is committed to the manufacturing operation when materials handling (via the front loader) from initial storage ceases and the aggregate is deposited on the conveyor which deposits it into the mixing drum.

\* The aggregate conveyor and mixing drum are not taxable.

\* The manufacturing operation continues in the mixer truck and is not completed until the concrete is discharged from the truck's mixer. Because the truck's mixer operates by power take off from the truck engine, the entire vehicle is production machinery and is not taxable.

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