

TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 21-12

Revenue rulings are not binding on the Department. This ruling is based on the particular facts and circumstances presented and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The applicability of the Tennessee sales and use tax industrial machinery exemption to a quarry where raw [MATERIAL] is mined.

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS

The Taxpayer operates a vertically integrated mining and manufacturing operation in Tennessee. The Taxpayer operates Plant A,¹ the mining operation/quarry, and Plant B, the manufacturing operation, at two separate locations. The two locations are [DISTANCE] apart. The Department has issued Plant B a sales and use tax industrial machinery exemption authorization.

At Plant A, the Taxpayer mines raw [MATERIAL]. The Taxpayer transfers the mined [MATERIAL] from Plant A to Plant B where it is processed and manufactured into [FINISHED PRODUCT] that is sold to third parties. Nearly all² of the raw [MATERIAL] extracted from the quarry is processed into [FINISHED PRODUCT] at the manufacturing facility and is for ultimate resale and use or consumption off the premises of the Taxpayer's quarry and [FINISHED PRODUCT] manufacturing facility.

RULING

Does Plant A qualify for a sales and use tax industrial machinery exemption authorization?

Ruling: Under the facts provided, Plant A can qualify for a sales and use tax industrial machinery exemption authorization. To obtain an exemption, the Taxpayer must ensure that Plant A is registered as a location for sales and use tax purposes, and it must complete the Application for Industrial Machinery, Energy Fuels and Water Sales and Use Tax Exemption form for Plant A and submit such application for review by the Department.

¹ Plant A is a mining quarry. [REDACTED].

² There are occasional times where mined [MATERIAL] is sold to a third party without being transferred to Plant B for processing and conversion into [FINISHED PRODUCT].

ANALYSIS

Under the Retailers' Sales Tax Act,³ the retail sale in Tennessee of tangible personal property and specifically enumerated services is subject to the sales tax, unless an exemption applies.⁴ TENN. CODE ANN. § 67-6-206(a) (Supp. 2021) exempts "industrial machinery" from the sales and use tax. In general, "industrial machinery" is defined as "machinery . . . that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises . . . where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business."⁵ Manufacturing is a taxpayer's principal business if more than fifty percent of its revenue at a given location is derived from fabricating or processing tangible personal property for resale.⁶

Tennessee courts have long held that equipment, machinery, and materials used to mine/extract materials may qualify as industrial machinery.⁷ In 1986, the definition of "industrial machinery" was amended to include the following language:

...mining machinery, apparatus equipment and materials, with all associated parts and accessories, including repair parts and any necessary repair or installation labor, that is necessary to and primarily for:

- (i) The removal, extraction or detachment of coal from land by surface, underground or other lawful methods of mining and the construction or maintenance of necessary ingress and egress from the mine;
- (ii) The removal, handling and replacement of overburden and spoils materials; or
- (iii) The reclamation of mined areas reclaimed under state or federal laws, rules or regulations[.]⁸

In the Taxpayer's case, because Plant A is a mining operation, it can qualify for the industrial machinery exemption for equipment, machinery, and materials necessary to or primarily used to mine/extract the raw [MATERIAL]. If Plant A is not registered for sales and use tax, it must first become registered because a taxpayer with multiple locations in the state must separately register each location even if the multiple locations are part of the same manufacturing process.⁹ The registration certificate is not transferable and cannot be used at a location different from the location for which the certificate was

³ Tennessee Retailers' Sales Tax Act (codified at TENN. CODE ANN. §§ 67-6-101 to -907 (2018 & Supp. 2021)).

⁴ TENN. CODE ANN. § 67-6-201 (Supp. 2021).

⁵ TENN. CODE ANN. § 67-6-102(46)(A)(i).

⁶ *Tenn. Farmers' Coop v. State ex rel. Jackson*, 736 S.W. 2d 87, 91-92 (Tenn. 1987).

⁷ See *Shearin v. Woods*, 597 S.W.2d 895 (Tenn. 1980) and *Jersey Miniere Zinc Co. v. Jackson*, 774 S.W.2d 928 (Tenn. 1989).

⁸ The Compiler's Notes following this statute provide the following information about the addition of this exemption: "Acts 1986, ch. 924 § 2 provided that it was the intention of the 1986 amendment by that act to clarify the original intention of the General Assembly in enacting Acts 1984 ch. 762 that industrial machinery involved in extracting minerals is exempt from the sales and use tax imposed by this chapter. It is also the intention of the General Assembly that nothing in Acts 1986 ch. 924 be construed to limit or remove any exemption previously granted in regard to industrial machinery used in mining."

⁹ TENN. CODE ANN. § 67-6-601(a) (Supp. 2021).

issued. Likewise, each location must separately apply for an industrial machinery exemption authorization because such authority is granted or denied on a location-by-location basis.¹⁰

Once Plant A is registered for sales and use tax, to obtain the exemption, the Taxpayer must complete the Application for Industrial Machinery, Energy Fuels and Water Sales and Use Tax Exemption form for Plant A.¹¹ Once received, the Department will review the Taxpayer's application and determine whether, based on the information provided, Plant A qualifies for the industrial machinery exemption. If the facts support issuance of an exemption, the Department will issue Plant A a sales and use tax industrial machinery exemption certificate authorization that includes an exemption number. If Plant A is issued the industrial machinery exemption certificate, the Taxpayer must present the certificate issued by the Department¹² to make sales and use tax exempt qualified purchases for Plant A.

APPROVED: David Gerregano
Commissioner of Revenue

DATE: 12/20/2021

¹⁰ *Tennessee Farmer's Co-Op v. Jackson*, 736 S.W.2d 87 (Tenn. 1987).

¹¹ See TENN. COMP. R. & REGS. 1320-05-01-.106 (2016). The Application for Industrial Machinery Exemption can be found on the Department's website at <https://www.tn.gov/content/dam/tn/revenue/documents/forms/sales/f1303101fillin.pdf>.

¹² Alternatively, the Taxpayer may issue a fully completed Streamlined Certificate of Exemption, which must include the exemption number on the certificate issued to Plant A by the Department.