



State of Georgia

Frank M. O'Connell
Interim State Revenue
Commissioner

Department of Revenue
Legal Affairs & Tax Policy
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NOTICE SUT 2021-002

RE: Proposal to amend Rule 560-12-2-.62 "Manufacturing Machinery and Equipment, Industrial Materials, and Packaging Supplies."

TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Rule 560-12-2-.62 "Manufacturing Machinery and Equipment, Industrial Materials, and Packaging Supplies."

The Department of Revenue will consider the amendment of Rule 560-12-2-.62 at a remote regulation hearing held at 10:00 AM on July 27, 2021, which can be accessed through the following link: <https://global.gotomeeting.com/join/860226837> or via telephone at 1 (571) 317-3129 and 1 877 309 2073 (toll-free) with the access code: 860-226-837. At the beginning of the hearing, attendees will be required to announce themselves and notify the Department if they plan to make oral comments during the hearing.

The Department must receive all comments regarding the above-referenced Rule(s) from interested persons and parties no later than 10:00 AM on July 27, 2021. Although the Department prefers to receive regulation comments electronically, the Department will also accept comments via mail and facsimile. Electronic comments must be sent to regcomments@dor.ga.gov. Written comments must be sent to: Georgia Department of Revenue, Attn: NOTICE SUT 2021-002, 1800 Century Blvd. NE, Suite 15300, Atlanta, GA 30345. Facsimile comments must be sent to (770) 342-3157. Please reference "NOTICE SUT 2021- 002" on all comments.

Dated: June 11, 2021.

Frank M. O'Connell
Interim State Revenue Commissioner
Georgia Department of Revenue

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION

CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS

560-12-2-.62. Manufacturing Machinery and Equipment, Industrial Materials, and Packaging Supplies

The Georgia Department of Revenue proposes to amend 560-12-2-.62 "Manufacturing Machinery and Equipment, Industrial Materials, and Packaging Supplies" by making changes as indicated by underline and strikethrough on the attached copy of the Rule.

The purpose of the amended Rule is to conform the Rule to O.C.G.A. § 48-8-3.2 as amended in 2021. The main features of the Rule are as follows:

Paragraph (1) Purpose.

Paragraph (2) Definitions.

Paragraph (3) Machinery and Equipment Exemption.

Paragraph (4) Industrial Materials Exemption.

Paragraph (5) Exemption for Packaging Supplies.

Paragraph (6) Certificates of Exemption.

Paragraph (7) Agriculture Producers.

1 **RULES**
2 **OF**
3 **DEPARTMENT OF REVENUE**
4 **SALES AND USE TAX DIVISION**

5
6 **CHAPTER 560-12-2**
7 **SUBSTANTIVE RULES AND REGULATIONS**

8 **560-12-2-.62. Manufacturing Machinery and**
9 **Equipment, Industrial Materials, and Packaging**
10 **Supplies**

11 (1) Purpose. This Rule explains the sales and use tax
12 exemptions in O.C.G.A § 48-8-3.2 for machinery and
13 equipment necessary and integral to the manufacture of
14 tangible personal property in a manufacturing plant, for
15 repair and replacement parts associated with such
16 machinery and equipment, and for industrial materials
17 and packaging supplies.

18 (2) Definitions. For purposes of this Rule, the following
19 definitions and explanations apply:

20 (a) "Consumable supplies" means tangible personal
21 property, other than machinery, industrial materials,
22 packaging supplies, and energy, that is consumed or
23 expended during the manufacture of tangible personal
24 property. The term includes but is not limited to water
25 treatment chemicals for use in, on, or in conjunction with
26 machinery or equipment and items that are readily
27 disposable.

28 (b) "Energy" means natural or artificial gas, oil, gasoline,
29 electricity, solid fuel, wood, waste, ice, steam, water, and
30 other materials necessary and integral for heat, light,
31 power, refrigeration, climate control, processing, or any
32 other use in any phase of the manufacture of tangible

33 personal property. The term excludes energy purchased
34 by a manufacturer that is primarily engaged in producing
35 electricity for resale.

36 (c) "Equipment" means tangible personal property, other
37 than machinery, industrial materials, and energy. The
38 term "equipment" includes durable devices and
39 apparatuses that are generally designed for long-term
40 continuous or repetitive use. The term also includes
41 consumable supplies. Examples of equipment include but
42 are not limited to machinery clothing, cones, cores,
43 pallets, hand tools, tooling, molds, dies, waxes, jigs,
44 patterns, conveyors, safety devices, and pollution control
45 devices. The term includes components and repair or
46 replacement parts. The term "equipment" excludes real
47 property.

48 (d) "Fixtures" means tangible personal property that has
49 been installed or attached to land or to any building
50 thereon and that is intended to remain permanently in its
51 place. A consideration for whether tangible property is a
52 fixture is whether its removal would cause significant
53 damage to such property or to the real property to which
54 it is attached. Fixtures are classified as real property.
55 Examples of fixtures include but are not limited to
56 plumbing, lighting fixtures, slabs, and foundations.

57 (e) "Industrial materials" means materials that are
58 purchased for future processing, manufacture, or
59 conversion into articles of tangible personal property for
60 resale when the industrial materials become a component
61 part of the finished product. The term also means
62 materials that are coated upon or impregnated into the
63 product at any stage of its processing, manufacture, or
64 conversion, even though such materials do not remain a

65 component part of the finished product for sale. The term
66 "industrial materials" includes raw materials.

67 (f) "Local sales and use tax" means any sales or use tax
68 that is levied and imposed in an area consisting of less
69 than the entire state.

70 (g) "Machinery" means an assemblage of parts that
71 transmits force, motion, and energy one to the other in a
72 predetermined manner to accomplish a specific objective.
73 The term "machinery" includes a machine and all of its
74 components, including but not limited to belts, pulleys,
75 shafts, gauges, gaskets, valves, hoses, pipes, wires,
76 blades, bearings, operational structures attached to the
77 machine including stairways and catwalks, and other
78 devices that are required to regulate or control the
79 machine, allow access to the machine, or to enhance or
80 alter its productivity or functionality. The term
81 "machinery" includes repair or replacement parts. The
82 term excludes real property, energy, and consumable
83 supplies.

84 (h) "Machinery clothing" means felts, screen plates, wires
85 or any other items used to carry, form, or dry work in
86 process through the manufacture of tangible personal
87 property.

88 (i) "Manufacture of tangible personal property," used
89 synonymously with the term "manufacturing," means a
90 manufacturing operation, series of continuous
91 manufacturing operations, or series of integrated
92 manufacturing operations, engaged in at a manufacturing
93 plant or among manufacturing plants to change, process,
94 transform, or convert industrial materials by physical or
95 chemical means, into articles of tangible personal
96 property for sale, for promotional use, or further
97 manufacturing that have a different form, configuration,

98 utility, composition, or character. The term includes but is
99 not limited to the storage, preparation, or treatment of
100 industrial materials; assembly of finished units of
101 tangible personal property to form a new unit or units of
102 tangible personal property; movement of industrial
103 materials and work in process from one manufacturing
104 operation to another; temporary storage between two
105 points in a continuous manufacturing operation; random
106 and sample testing that occurs at a manufacturing plant;
107 and a packaging operation that occurs at a manufacturing
108 plant.

109 (j) "Manufacturer" means a person or business, or a
110 location of a person or business that is engaged in the
111 manufacture of tangible personal property for sale,
112 promotional use, or further manufacturing.

113 1. To be considered a manufacturer, the person or
114 business, or the location of a person or business, must be:

115 (i) Classified as a manufacturer under the 2007 North
116 American Industrial Classification System Sectors 21, 31,
117 32, or 33; or North American Industrial Classification
118 Systems industry code 22111 or specific code 511110; or

119 (ii) Generally regarded as a manufacturer.

120 2. Businesses that are primarily engaged in providing
121 personal or professional services, or in the operation of
122 retail outlets, generally including but not limited to
123 grocery stores, pharmacies, bakeries, or restaurants, are
124 not considered manufacturers.

125 (k) "Manufacturing plant" means any facility, site, or
126 other area where a manufacturer engages in the
127 manufacture of tangible personal property.

128 (l) "Packaging operation" means bagging, boxing, crating,
129 canning, containerizing, cutting, measuring, weighing,

130 wrapping, labeling, palletizing, or other similar processes
131 necessary to prepare or package manufactured products
132 in a manner suitable for sale or delivery to customers as
133 finished goods, or suitable for the transport of work in
134 process at or among manufacturing plants for further
135 manufacturing, and the movement of such finished goods
136 or work in process to a storage or distribution area at a
137 manufacturing plant.

138 (m) "Packaging supplies" means materials, whether
139 reusable or single-use, used in a packaging operation
140 solely for packaging tangible personal property. The term
141 includes but is not limited to containers, sacks, boxes,
142 wraps, fillers, cones, cores, pallets, and bags. The term
143 also includes such items as labels, invoices, packing slips,
144 tags, and plates affixed to the product or affixed to or
145 inserted into product packaging.

146 (n) "Real property" means land, any buildings thereon,
147 and any fixtures attached thereto.

148 (o) "Repair or replacement part" means a part that is used
149 to maintain, repair, restore, install, or upgrade machinery
150 or equipment that is necessary and integral to the
151 manufacture of tangible personal property. Examples of
152 repair and replacement parts may include but are not
153 limited to oils, greases, hydraulic fluids, coolants,
154 lubricants, machinery clothing, molds, dies, waxes, jigs,
155 and other interchangeable tooling.

156 (p) "Substantial purpose" means the purpose for which an
157 item of tangible personal property is used more than one-
158 third of the total amount of time that the item is in use.
159 Alternatively, instead of time, the purpose may be
160 measured in terms of other applicable criteria such as the
161 number of items produced.

162 (3) Machinery and Equipment Exemption. The sale, use
163 and storage of machinery or equipment that is necessary
164 and integral to the manufacture of tangible personal
165 property are exempt from sales and use tax.

166 (a) General requirements. In order to qualify for the
167 manufacturing machinery and equipment exemption in
168 O.C.G.A § 48-8-3.2, the property purchased or leased
169 must:

170 1. Have the character of machinery or equipment, or of
171 repair or replacement parts to machinery or equipment,
172 at the time of sale or lease, or consist of components
173 which, when assembled, will have the character of
174 machinery or equipment;

175 2. Be used at a manufacturing plant; and

176 3. Be necessary and integral to the manufacture of
177 tangible personal property for sale, for promotional use, or
178 further manufacturing.

179 (b) Leases. The exemption under O.C.G.A § 48-8-3.2
180 applies to all lease payments for machinery or equipment
181 made on or after the date that the machinery or
182 equipment qualifies for the exemption, even if the
183 machinery or equipment did not qualify for the exemption
184 at the date of lease inception.

185 (c) Parts withdrawn from inventory. Miscellaneous spare
186 parts, the ultimate use of which is unknown at the time of
187 purchase, are eligible for the exemption as components or
188 repair or replacement parts. However, use tax must be
189 accrued and remitted if spare parts are withdrawn from
190 the inventory of spare parts and used for any purpose
191 other than to maintain, repair, restore, install, or upgrade
192 machinery or equipment that is necessary and integral to
193 the manufacture of tangible personal property.

194 (d) Application of Machinery and Equipment Exemption:
195 Necessary and Integral. When determining whether
196 machinery or equipment is necessary and integral to the
197 manufacture of tangible personal property, the
198 Commissioner shall evaluate the facts and circumstances
199 of each case.

200 1. Examples of machinery or equipment that generally
201 does not qualify as necessary and integral to the
202 manufacture of tangible personal property at any time
203 include but are not limited to:

204 (i) Motor vehicles that are required to be registered for
205 operation on public highways;

206 (ii) Power lines or transformers that bring electricity into
207 a manufacturing plant;

208 (iii) Real property. Examples include but are not limited
209 to concrete slabs and foundations, and structures or
210 fixtures used for general manufacturing plant ventilation,
211 heating, cooling, illumination, communications, plumbing,
212 or the personal comfort and convenience of the
213 manufacturer's employees;

214 (iv) Storage tanks, containers, racking systems, or other
215 machinery or equipment used to handle, store, or
216 distribute finished goods upon completion of the
217 packaging operation unless exempted by another code
218 section;

219 (v) Administrative machinery or equipment including
220 computers, related computer peripherals, servers, copiers,
221 telephones, facsimile machines, office furniture, office
222 furnishings, office supplies such as paper and pencils, and
223 educational materials used for non-manufacturing
224 functions, including but not limited to sales, marketing,
225 research and development, accounting and payroll,

- 226 purchasing, finished goods inventory control,
227 warehousing, and distribution;
- 228 (vi) Machinery or equipment that is not operated under
229 the control of the manufacturer's employees or other
230 persons under the manufacturer's direction and control.
231 Customer self-service or vending machinery or equipment
232 is not considered to be operated under the manufacturer's
233 direction and control; and
- 234 (vii) Machinery or equipment used in quarrying and
235 mining for site preparation, including the removal and
236 clearing of overburden.
- 237 2. Examples of machinery or equipment that generally
238 qualifies as necessary and integral to the manufacture of
239 tangible personal property include but are not limited to:
- 240 (i) Machinery or equipment used to convey or transport
241 industrial materials, work in process, consumable
242 supplies, or packaging supplies at or among
243 manufacturing plants, or to convey and transport finished
244 goods to a distribution or storage point at the
245 manufacturing plant. Specific examples may include but
246 are not limited to forklifts, conveyors, cranes, hoists, and
247 pallet jacks;
- 248 (ii) Machinery or equipment used to gather, arrange, sort,
249 mix, measure, blend, heat, cool, clean, or otherwise treat,
250 prepare, or store industrial materials for further
251 manufacturing;
- 252 (iii) Machinery or equipment used to control, regulate,
253 heat, cool, or produce energy for other machinery or
254 equipment that is necessary and integral to the
255 manufacture of tangible personal property. Specific
256 examples may include but are not limited to boilers,
257 chillers, condensers, water towers, dehumidifiers,

- 258 humidifiers, heat exchangers, generators, transformers,
259 motor control centers, solar panels, air dryers, and air
260 compressors;
- 261 (iv) Testing and quality control machinery or equipment
262 located at a manufacturing plant used to test the quality
263 of industrial materials, work in process, or finished goods;
- 264 (v) Starters, switches, circuit breakers, transformers,
265 wiring, piping, and other electrical components, including
266 associated cable trays, conduit, and insulation, located
267 between a motor control center and exempt machinery or
268 equipment, or between separate units of exempt
269 machinery or equipment;
- 270 (vi) Machinery or equipment used to provide safety for the
271 employees working at a manufacturing plant or to protect
272 the quality of the product, including but not limited to
273 safety machinery and equipment required by federal or
274 state law, gloves, ear plugs, face masks, protective
275 eyewear, hard hats or helmets, or breathing apparatuses;
- 276 (vii) Machinery or equipment used to condition air or
277 water to produce conditions necessary for the
278 manufacture of tangible personal property, including
279 water treatment systems;
- 280 (viii) Machinery or equipment used in quarrying and
281 mining activities, including blasting, extraction, and
282 crushing;
- 283 (ix) Machinery or equipment, including repair,
284 replacement and component parts, used to maintain,
285 clean, repair, restore, install, upgrade or manufacture
286 machinery or equipment that is necessary and integral to
287 the manufacture of tangible personal property;
- 288 (x) Machinery or equipment used in pollution control,
289 sanitizing, sterilizing, or recycling processes. Pollution

290 control machinery or equipment that is necessary and
291 integral to the manufacture of tangible personal property
292 is not required to be certified by the Environmental
293 Protection Division, Georgia Department of Natural
294 Resources as being adequate and necessary for the
295 purpose of eliminating or reducing air or water pollution;
296 and

297 (xi) Maintenance and replacement parts for machinery or
298 equipment, stationary or in transit, used to mix, agitate,
299 and transport freshly mixed concrete in a plastic and
300 unhardened state, including but not limited to mixers and
301 components, engines and components, interior and
302 exterior operational controls and components, hydraulics
303 and components, all structural components, and all safety
304 components.

305 (I) Sales and use taxes on motor fuel used as energy in a
306 concrete mixer truck are not exempt or refundable.

307 (II) Subparagraph (3)(d)2.(xi) is effective ~~from July 1,~~
308 ~~2017 until July 1, 2020~~ for the period commencing on July
309 1, 2021, and ending on June 30, 2026.

310 3. For machinery or equipment that has multiple
311 purposes, some purposes necessary and integral to the
312 manufacture of tangible personal property, and some
313 purposes not necessary and integral to the manufacture of
314 tangible personal property, the substantial purpose of
315 such machinery or equipment will prevail for purposes of
316 determining the eligibility for exemption. The
317 Commissioner may consider any reasonable methodology
318 for measuring the substantial purpose of machinery or
319 equipment for which the substantial purpose is not
320 readily identifiable.

321 (e) Application of Machinery and Equipment Exemption:
322 Manufacture of Tangible Personal Property. The
323 manufacture of tangible personal property commences as
324 industrial materials are received at a manufacturing
325 plant and concludes once the packaging operation is
326 complete and the tangible personal property is ready for
327 sale or shipment, regardless of whether the manufacture
328 of tangible personal property occurs at one or more
329 separate manufacturing plants.

330 Examples of activities that are not considered the
331 manufacture of tangible personal property:

- 332 1. Research and development activities;
- 333 2. Storage, general handling, and distribution of finished
334 goods inventory; and
- 335 3. Any other activity that occurs prior to industrial
336 materials being received at a manufacturing plant or
337 after the completion of the packaging operation at a
338 manufacturing plant.

339 (4) Industrial Materials Exemption. The sale, use,
340 storage, and consumption of industrial materials are
341 exempt from sales and use tax. In order to qualify for the
342 exemption, the materials must be used for the processing
343 or manufacture of, or conversion into, articles of tangible
344 personal property; and the industrial materials must:

- 345 (a) become a component part of the finished product or
- 346 (b) be coated upon or impregnated into the product at any
347 stage of its processing, manufacture, or conversion, even
348 though such materials do not remain a component part of
349 the finished product for sale.

350 (5) Exemption for Packaging Supplies. The sale, use,
351 storage, or consumption of packaging supplies is exempt
352 from sales and use tax.

353 (6) Certificates of Exemption.

354 (a) Any person making a sale or lease of machinery or
355 equipment (including components and repair or
356 replacement parts) that is necessary and integral to the
357 manufacture of tangible personal property, packaging
358 supplies, or industrial materials must collect sales tax
359 unless such person takes a direct pay permit from the
360 purchaser or lessee or, in good faith, accepts from the
361 purchaser or lessee a properly completed Form ST-5M
362 Certificate of Exemption.

363 (b) Where a certificate of exemption or direct pay permit
364 has not been previously obtained and submitted and tax
365 is remitted on the purchase or lease of exempt property,
366 the purchaser or lessee may apply to the Commissioner
367 for a refund of such tax.

368 (7) Agriculture Producers. Every person defined as a
369 dealer in O.C.G.A. § 48-8-2 is required to file a sales and
370 use tax registration for each place of business in this
371 state. A dealer that performs both manufacturing and
372 agricultural operations at a single place of business may
373 avail itself of the exemptions under either O.C.G.A. § 48-
374 8-3.2 or O.C.G.A. § 48-8-3.3, but not both, for that place of
375 business in any one calendar year.

376 AUTHORITY: O.C.G.A. §§ 48-2-12, 48-8-3.2.