

**CHAPTER 41. MANUFACTURING; PROCESSING**

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**Source**

The provisions of this Chapter 41 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686, unless otherwise noted.

**§ 41.1. [Reserved.]****Source**

The provisions of this § 41.1 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686; reserved March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322. Immediately preceding text appears at serial pages (136633) to (136634).

**§ 41.2. Concrete transit mixing unit.**

(a) A concrete mixing unit which is mounted on a motor vehicle and used to manufacture transit mix concrete may not be subject to tax since the concrete mixing unit is used directly in an operation of manufacturing.

(b) The motor vehicle upon which the concrete mixing unit is mounted is subject to tax since the motor vehicle is not used directly in an operation of manufacturing.

**Source**

The provisions of this § 41.2 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686.

**§ 41.3. Dry ice for packaging ice cream.**

The sale of dry ice when purchased for internal packaging in conjunction with the sale of ice cream to others is not subject to tax. The purchaser shall tender an exemption certificate to his supplier setting forth thereon that the property purchased constitutes a wrapping supply for use in wrapping property for delivery to others. Reference should be made to § 32.6 (relating to wrapping supplies, equipment and services).

**Source**

The provisions of this § 41.3 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686.

**§ 41.4. Gas used by a manufacturer.**

Natural, manufactured or bottled gas used in the actual production process, such as gas used for purpose of manufacturing ceramics, is exempt from tax. Gas used to heat a portion of a manufacturing building such as the administration, production or storage areas is subject to tax since it is not used directly in manufacturing.

**Source**

The provisions of this § 41.4 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686.

**§ 41.5. Integrated plants.**

(a) Whenever a person is engaged in a recognized integrated business composed of a series of operations which either collectively constitute manufacturing, or individually constitute one or more of the operations specified as manufacturing in section 201(c)(2), (3), (4) or (5) of the TRC (72 P. S. § 7201(c)(2), (3), (4) or (5)), the first production stage is deemed to commence with the first stage of production in the series, and production is not deemed to end finally until the completion of the product in the last operation of the production series.

*Example.* The X Company is engaged in mining coal and iron, making steel ingots and fabricating various products from steel. The company's first production stage for the purposes of the tax commences with the first stages of production in the mining of coal and iron, and the final stage of production is the completion of the fabrication of its end products. The exemption applies to the purchase and use of property and services to be used directly in any of the mining, ingot making, and steel fabricating operations in this integrated business.

(b) The operations of manufacturing conducted by the manufacturer include the following:

(1) The production and transmission of electrical power for use in other manufacturing operations.

(2) The production and transmission of gases, air and steam for use in manufacturing operations, including the production of electric power.

**Source**

The provisions of this § 41.5 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686.

**§ 41.6. Processing for wholesale distribution.**

Section 201(d) of the TRC (72 P. S. § 7201(d)) grants a limited exemption to certain, defined processing activities where the product in question is processed for wholesale distribution. The exemption is limited to the purchase and use of property to be used directly in the specified "processing" activities under the act. It does not apply to property used indirectly in processing, or to motor vehicles

required to be registered under 75 Pa.C.S. §§ 101—9909 (relating to the Vehicle Code), or to property used in the construction, reconstruction, remodeling, and the like of real estate, or to maintenance items, or property used in sales activities, managerial activities or other nonoperational activities.

**Source**

The provisions of this § 41.6 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686.

**§ 41.7. Pump for conveying water prior to production process.**

A pump used in conjunction with the conveying of raw river water to a filtration plant where such water is treated prior to use directly in the production of a steel product is not considered to be used directly in a production process.

**Source**

The provisions of this § 41.7 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686.

**§ 41.8. Recapping and retreading of tires.**

Under the decision of the Commonwealth Court in *Commonwealth v. Goodyear Tire & Rubber Company*, 88 Dauph. 301 (1967), tangible personal property used directly in the recapping or retreading of tires is exempt from tax under the manufacturing exemption. Reference should be made to § 32.32 (relating to manufacturing; processing).

**Source**

The provisions of this § 41.8 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686.

**§ 41.9. Research exemption.**

(a) *Generally.* Section 201(c)(5) of the TRC (72 P. S. § 7201(c)(5)) exempts from tax the purchase and use of tangible personal property and services to be used directly in research having as its objective the production of a new or improved product or utility service or method of producing a product or utility service, but in either case not including market research or research having as its objective the improvement of administrative efficiency. The exemption also applies to taxpayers who undertake research under contract for exempt purposes.

(b) *Research operations.* Research operations include inquiry, investigation, experimentation and testing, and the analysis, critical study, compilation and development of the results thereof. Generally, the immediate products of research operations are information and knowledge even though incident thereto a researcher produces a salable or usable product or prototype thereof. The exemption provided with regard to research operations applies only to those research

operations which have for their ultimate purpose the production of a new or improved product or utility service, or new or improved methods of producing a product or utility service.

(c) *Direct use limitation.* The direct use limitation shall conform with the following:

(1) The exemption applies only to the purchase and use of tangible personal property and otherwise taxable services to be used directly in research operations as described in this section. In determining whether particular property is used directly in research operations, consideration shall be given to the following factors:

(i) The physical proximity of the property or services to the research activities.

(ii) The proximity of the time of the use of the property or services to the research.

(iii) The active, causal relationship between the use of the property or services and the research development.

(2) In order to meet the direct use test, it is essential that the taxpayer establish that such causal relationship exists. The fact that property is essential to the conduct of the research operations does not of itself mean that the property is used directly in research. On the other hand, the fact that the research operations could be successfully conducted in some manner which does not involve use of the property or service in question is not conclusive that such property or service is not used directly in the research operations.

(3) Examples of things purchased by a research establishment which may be used directly in research operations are testing specimens and samples and components thereof, scientific books and periodicals pertaining to the matters which are the subject of the research in question, analogue or digital computers used to make computations in research operations, laboratory equipment and supplies, and equipment and supplies used for the testing, recordation, analysis, interpretation and development of mathematical, scientific, engineering and other research data. In the case of pharmaceutical and biological research, use of live animals and animal feed, bedding, surgical supplies and cages used in connection with animals is deemed to be directly used in the research operations.

(d) *Predominant use test.* The exemption applies only to those things which are predominantly used directly in research operations. Where property or services are utilized for purposes to which the exemption applies and for purposes to which the exemption is inapplicable, the predominant purpose shall determine whether the sales transaction or use is covered by the exemption.

(e) *Other limitations on the exemption.* The exemption does not apply to the purchase or use of property or services to be used indirectly in research operations nor is the exemption applicable to the purchase or use of property or services to be used in managerial activities, sales activities, or other nonoperational

activities of a research establishment or project. The exemption does not apply to the purchase and use of vehicles required to be registered under the 75 Pa.C.S. §§ 101—9909 (relating to the Vehicle Code), or The Tractor Code. The exemption does not apply to the purchase or use of maintenance tools, equipment, supplies, materials or services or to things which otherwise are used in or become part of the maintenance facilities of the research establishment or project. However, replacement and repair parts which become part of equipment or machinery used directly in research operations are exempt from tax. The exemption does not apply to things used in the construction, reconstruction, remodeling, maintenance or repair of the real estate of the research establishment or project, other than such things which comprise machinery or equipment used directly in researching operations.

#### Source

The provisions of this § 41.9 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686; amended March 9, 1984, effective March 10, 1984, 14 Pa.B. 844. Immediately preceding text appears at serial pages (40352) to (40354).

#### Notes of Decisions

A laboratory's analysis, research and testing of client-provided products did not constitute a transformation of property or otherwise satisfy the definition of "manufacturing" as would entitle it to an exclusion from use tax. *Lancaster Laboratories, Inc. v. Commonwealth*, 578 A.2d 988 (1990); vacated in part 611 A.2d 815 (Pa. Cmwlth. 1992); affirmed in part 631 A.2d 739 (Pa. Cmwlth. 1993).

The extent to which laboratory used equipment directly in testing and inspection of products in manufacturer's production cycle brought it within testing and inspection exemption to use tax but use of equipment to develop information to be employed in labelling products is neither within testing and inspection nor research provision of manufacturing exemption. *Lancaster Laboratories, Inc. v. Commonwealth*, 578 A.2d 988 (Pa. Cmwlth. 1990).

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