



April 27, 2017

VIA Electronic Mail

Ohio Department of Taxation
ATTN: Laura Stanley
30 E. Broad St.
Columbus, OH 43216

Re: **OMA Written Comments to Manufacturing Rule; OAC 5703-9-21: Ohio Department of Taxation Draft Revisions**

Dear Ms. Stanley:

Pursuant to Ohio Department of Taxation's (ODT) notice, issued on April 11, 2017, The Ohio Manufacturers' Association (OMA) is hereby providing ODT with written comments to Ohio's Manufacturing Sales and Use tax rule 5703-9-21.

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported a reasonable, necessary and transparent state tax system that encourages investment and growth.

Ohio's sales tax was first enacted as a temporary measure in the depths of the Great Depression in the 1930s. At that time, it was conceived as a tax on the final personal consumption of tangible goods. One year after initial enactment, the use tax was enacted, the two taxes were made permanent and the first exemption for machinery and equipment used to produce tangible personal property for sale by manufacturing was added.

The rationale for these exclusions is simple: The taxes are intended to be imposed upon the final personal consumption of goods and, now, those selected services that are subject to tax. Intermediate transactions prior to the final sale of the product, including the acquisition of machinery and equipment and the raw materials that are incorporated into the final product are not intended to be taxed.

Ohio, like many states, continues to provide an exemption from the sales tax for purchases of tangible personal property used in the process by which tangible personal property is produced for sale by manufacturing. In Ohio this exemption was for a long time the subject of much litigation as to its application and scope.

In 1989 the legislature enacted a sweeping revision to the manufacturing exemption in an effort to clarify and reduce the amount of litigation. At the same time ODT promulgated rule 5703-9-21 which provided guidance, including examples, relating to the application of the new rule.

ODT has recently proposed revisions to the rule. This represents the first time since the rule was promulgated in 1989 that changes have been proposed. While some of the changes made by ODT are not material other changes are significant. The following changes appearing to be substantive include:

1. Proposed changes in the fourth paragraph of division (B)(1), relating to the beginning of the manufacturing process and the commitment of materials to that process;
2. Proposed new division (C)(12) relating to equipment used to clean towels, lines, and other similar items provided as part of a laundry cleaning service;
3. Proposed new division (C)(13) relating to equipment used to clean processing equipment in manufacturing related to dairy products produced for human consumption;
4. Revision to Example 2 that add the words “measured and” to the example;
5. Example 54 is revised to address the exemption of qualified research and development equipment;
6. The addition of a statements of exemption in Examples 63 and 64 relating to cleaning dairy processing equipment; and
7. New examples 65 and 66 relating to the beginning point of manufacturing and safety equipment.

To the extent these changes are substantive in nature; they may have a profound impact on the industry and its needs to consider the changes and weigh in on them. The short turnaround requested by ODT for full comments from the industry on these major revisions is simply not possible in the designated time.

This rule review represents the first time in almost 30 years that revisions to the rule have been proposed. This rule was crafted in a very deliberative and collaborative manner involving manufacturers and ODT, and it has enjoyed relative success in achieving its goals of relative certainty and reduced litigation.

OMA requests a similar approach for this rule review. Recreating the collaborative work group would continue the good will and common understanding that were generated in the original process. Many things in manufacturing have changed over the last 30 years

and this five year rule review is the perfect vehicle to modernize and update the rule benefiting both manufacturers and Ohio.

The OMA appreciates the opportunity to comment on this initial draft to Rule 5703-9-21. We look forward to working with ODT as the rule review moves forward. Again we strongly urge ODT to reconvene the previous collaborative work group to work through any issues and ambiguities the rule may have created over the past 30 years. If ODT has any questions regarding the foregoing, please do not hesitate to contact me or OMA's tax counsel, Mark Engel at Bricker & Eckler LLP (513-870-6565).

Sincerely,



Rob Brundrett
Director, Public Policy Services

CC: Matt Chafin
Merle Madrid
Peter Voderberg