

MEMORANDUM

TO: Robert A. Brundrett, OMA
FROM: Mark A. Engel, Bricker & Eckler LLP
DATE: August 17, 2017
RE: Update Memo for the Proposed Changes to
Manufacturing Rule

Updated Analysis

As you know, in May the department of taxation announced, as part of its periodic review of its rules, that it was reviewing the sales tax manufacturing rule. It proposed a few changes suggested by its audit division and circulated them for review. Following a meeting of interested parties, at which many comments were made, the department pulled back and re-examined the rule in light of the comments.

The department just issued its new revisions based upon those comments. There are not many, but they are significant.

First, in division (B)(1), the department originally added language to the fourth paragraph regarding the beginning of manufacturing. The added language indicated that activities to heat or mix raw ingredients in order to maintain their condition were not manufacturing. The references to heating or mixing are removed, so that any activity that maintains condition is not considered to be manufacturing.

The proposed changes to division(C)(12) and (13) remain. These changes incorporate statutory and decisional interpretations of the scope of the exemption.

One of the comments made during the meetings related to whether or not the manufacturing rule should include references to other exemptions. The department has suggested that division(D)(8) be revised to state that R&D equipment wasn't covered by this rule, but that it nevertheless was exempt. That reference, and examples 18 and 54 that referenced the provision, are stricken from the latest proposal for the rule.

Example 2 was revised slightly to differentiate between material handling from storage to the place of manufacturing, which is taxable, and handling equipment that introduces the material into the manufacturing process. This latter equipment is exempt.

Former example 54, addressing the R&D exemption, was removed and a new example relating to HVAC equipment was put in its place.

In response to another comment about mixing the conclusions relating to taxable and exempt equipment within examples, the conclusions in Example 64 were re-ordered so that all items that were not taxable were listed together.

Conclusion

In summary, many of the changes are minor, but positive. The change in the commencement of manufacturing, however, to exclude any equipment that maintains the condition of the material, remains problematic.