**Opinion Letter**

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| **Letter Number:** | **O-2001-024** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Integrated Plant Exemption related.** |
| **Keywords:** |  |
| **Approval Date:** | **10/29/2001** |

**Body:**

Office of Policy & Research

October 29, 2001

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RE: Your letter of October 18, 2001

Dear XXXX:

Thank you for your recent letter. You ask how the Integrated Plant Exemption, enacted by the Kansas Legislature in 2000, applies to your company's manufacturing operations. You ask if the exemption extends to sterilization equipment used to sterilize bottles and other containers that hold the finished product. You ask about the taxability of plant lighting equipment. The rest of your questions concern equipment used for plant heating, air-conditioning, and air purification.

Unlike the earlier manufacturing machinery and equipment exemptions that were more limited, the exemption enacted by the 2000 Kansas legislature details the breadth of the exemption. For example, K.S.A. 79-3606(kk)(1)(A) provides the following definition:

(A) "Integrated production operation" means an integrated series of operations engaged in at a manufacturing or processing plant or facility to process, transform or convert tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. Integrated production operations shall include: (i) Production line operations, including packaging operations; (ii) preproduction operations to handle, store and treat raw materials; (iii) post production handling, storage, warehousing and distribution operations; and (iv) waste, pollution and environmental control operations, if any;

Sterilization equipment used to sterilize bottles and containers that hold the finished product would be considered to be a packaging operation that is part of the integrated production operations. This exemption would apply to manufacturers of food, drink, pharmaceuticals, and any other manufacturer whose product is packaged in sterile containers. Electricity used to operate the machinery would also be exempt since the machinery is equipment used in integrated production operations.

You ask: "Would lighting, heating and air-conditioning equipment used to light, heat and cool manufacturing and processing areas be considered exempt manufacturing equipment? Would the utilities used to operate this equipment be considered consumed in production?" The answers to these questions is no. This equipment is listed in K.S.A. 79-3606(kk)(G) and (H) as equipment that is not exempt from tax:

(5) "Machinery and equipment used as an integral or essential part of an integrated production operation" shall not include: . . .
(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing or electrical;
(H) machinery and equipment used for general plant heating, cooling and lighting;

Your next questions involve air-cleaning equipment used where raw materials are stored. The overhead equipment filters out air borne particles that are produced when the raw materials are removed from their storage containers. K.S.A. 79-3606(kk)(1)(A), which is quoted above, provides in parts relevant here: "Integrated production operations shall include: . . . (ii) preproduction operations to handle, store and treat raw materials. . . ."

K.S.A. 79-3603(3)(m) provides:

(3) For purposes of this subsection, machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used: . . .
(K) to provide and control an environment required to maintain certain levels of air quality, humidity or temperature in special and limited areas of the plant or facility, where such regulation of temperature or humidity is part of and essential to the production process;

Subsection (3)(K) is directed at areas such as clean rooms and painting booths. It could apply to the equipment used in the raw storage area if that area is a "limited area of the plant or facility." This requires that the area be physically isolated from the rest of the plant, so that the equipment would be used for that confined area rather than for general plant air quality. Separation would require, at a minimum, that doors opening to the rest of the plant close automatically and that the plants normal air conditioning and heating units not have outlets or uptake ductwork in the area claimed to be separated from the rest of the plant. If the equipment is used for a separate, limited area of the plant, it would qualify for exemption. Since 2000, if the equipment is exempt, the electricity to drive the equipment also would be exempt. Please note that you have not provided sufficient information about how this area is physically separated from the rest of the plant to provide an opinion on this issue. However, the statutes seem clear and this discussion should allow you to make an accurate determination based on the arrangement of your company's building.

The last set of questions concerns "areas of our manufacturing facility [that] have air-handling equipment to process the volume of air several times per hour." As with the preceding question, the answer to this question depends on the degree to which these areas are separated from the rest of the plant. As noted, the exemption is directed to clean-rooms, painting rooms and other areas of a production operation that are physically isolated from the rest of the plant. If there is no physical isolation, the exemption would not apply. Your plant engineer should be able to answer these questions.

This is not a private letter ruling since you are asking about your company's duty to pay tax. Private letter ruling are only issued to retailer who asks if they are required to collect sales tax from their customer. I believe that my advise and discussion with your plant engineer will help you correctly apply the law to all of your questions. If you need to discuss this matter further, please call me at 785-296-3081.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 10/30/2001 Date Modified: 10/30/2001**