

Regulation 39-26-709.1

For machinery to be used predominantly in manufacturing, the greatest use of the machinery must be its use in manufacturing. If a machine has other uses in addition to its manufacturing use, the manufacturing use must be greater than 50% of all use to qualify for the exemption. For purposes of determining whether the manufacturing use of an item of machinery is greater than 50% of all use, machinery which is shut off is not in use, even while being repaired or maintained.

(A) The following are examples of direct uses in manufacturing:

(1) Machinery which cleans or prepares raw or prepared materials for production on the manufacturing line, after manufacturing has begun and before it has stopped.

(2) Machinery which performs testing of a particular product tested during the manufacturing process, or testing as a step in a continuous manufacturing line process.

(3) Loader, fork lift or conveyor belt machinery integral to the manufacturing line process, moving material from inventory on the contiguous plant site, through the manufacturing line steps, and such machines moving material through the final alternation or packaging.

(B) The following are not direct uses in manufacturing, and are not exempt:

(1) Machinery used in repair and maintenance of machines or other items, or in cleaning of machinery. Repairing, maintaining or cleaning manufacturing facilities is not manufacturing. Manufacturing is working to alter a product within the manufacturing definition, or cleaning the product in its raw, intermediate or finished state.

(2) Machinery used in managerial, sale research and development, or other non-operational activities.

(D) The limitation imposed by C.R.S. 39-26-114(11)(d), requires that property would have qualified for the investment tax credit against federal income tax. The investment tax credit was limited to used property, and only the first \$150,000 of used property in a tax period could be claimed as a credit against federal income tax. [§48(c)(2)(a), ref. §46(c) of the Internal Revenue Code of 1954 as it existed prior to the Tax Reform Act of 1986.] As the excess over \$150,000 could not qualify for credit against federal income tax, the excess does not qualify for the sales tax exemption. Therefore, annually, only the first \$150,000 of purchases of used machinery to be used directly and predominantly in manufacturing would qualify for this sales tax exemption. All purchases of used property in excess of that amount annually would be sales taxable.

(E) Leases of machinery or machine tools used in manufacturing are exempt under the following conditions:

(1) The lessee must qualify for the investment tax credit (ITC) against federal income tax as was provided by Section 38 of the "Internal Revenue Code of 1954", as amended. For federal ITC to have passed through to the lessee, the lease must be for more than three years. Leases under three years may qualify if within the transaction, complete payment for the machine occurs within three years, via balloon payments, large down payments, or full amortization of all financed balance over a short term lease.

(2) The minimum lease payments must be for more than \$500 during that three year period.

(3) The machinery must be used in Colorado directly and predominantly in manufacturing, (i.e., meet the other statutory tests).