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**Kentucky Technical Advice Memorandum
KY-TAM-25-01**

SUBJECT: Eligibility of Sales and Use Tax Exemptions for Forklifts Used in a Manufacturing Facility

EFFECTIVE DATE: Applies to all periods open under statute.

SUPERSEDES: N/A

REFERENCES: [KRS 139.010](#)
[KRS 139.470](#)
[KRS 139.480](#)
[103 KAR 30:120](#)
[103 KAR 30:140](#)

AUTHORITY: [KRS Chapter 13A](#)
[KRS 131.130](#)

SCOPE: The purpose of a Technical Advice Memorandum (“TAM”) is to provide direction to the public and to Department personnel. A TAM is issued to apply principles of law to a set of facts or general category of taxpayers. The Kentucky Department of Revenue (“DOR”), in its discretion, may retroactively withdraw, revoke, or modify any TAM including, but not limited to, if there was a change in the applicable statute(s), regulation(s), case law or other DOR guidance; or if the TAM was issued in error. A TAM does not constitute a final ruling, order or determination of the DOR, and cannot be appealed.

I. Issue/Question(s)

1. Do replacement forklifts qualify for the Machinery for New & Expanded Industry Exemption?

2. Does an additional forklift included in the fleet for movement of in-process product within the manufacturing area to the packaging area qualify for the Machinery for New & Expanded Industry Exemption?
3. Is the fuel used to power forklifts subject to sales and use tax? Off-road diesel, propane, and battery power are the sources of fuel for these forklifts.
4. Are separately stated labor charges to repair forklifts subject to sales and use tax?
5. Are supplies such as grease, coolant, hydraulic fluid, and motor oil used to keep forklifts operating properly subject to sales and use tax?

II. Law

[KRS 139.480 \(10\)](#) exempts from sales and use tax the sale, use, storage, or consumption of machinery for new and expanded industry.

The terms “machinery for new and expanded industry” and “manufacturing” are defined in [KRS 139.010\(22\) and \(23\)](#).

(22) (a) “Machinery for new and expanded industry” means machinery:

1. Directly used in the manufacturing or industrial processing process of:
 - a. Tangible personal property at a plant facility;
 - b. Distilled spirits or wine at a plant facility or on the premises of a distiller, rectifier, winery, or small farm winery licensed under KRS 243.030 that includes a retail establishment on the premises; or
 - c. Malt beverages at a plant facility or on the premises of a brewer or microbrewery licensed under KRS 243.040 that includes a retail establishment;
2. Which is incorporated for the first time into:
 - a. A plant facility established in this state; or
 - b. Licensed premises located in this state; and
3. Which does not replace machinery in the plant facility or licensed premises unless that machinery purchased to replace existing machinery:
 - a. Increases the consumption of recycled materials at the plant facility by not less than ten percent (10%);
 - b. Performs different functions;
 - c. Is used to manufacture a different product; or
 - d. Has a greater productive capacity, as measured in units of production, than the machinery being replaced.

(b) “Machinery for new and expanded industry” does not include repair, replacement, or spare parts of any kind, regardless of whether the purchase of repair, replacement, or spare parts is required by the manufacturer or seller as a condition of sale or as a condition of warranty.

(23) “Manufacturing” means any process through which material having little or no commercial value for its intended use before processing has appreciable commercial value for its intended use after processing by the machinery.

[KY Regulation 103 KAR 30:120 - Machinery for new and expanded industry, Section 2. Requirements for Exemption](#). The machinery and the appurtenant equipment necessary to the completed installation of such machinery, together with the materials directly used in the installation of such machinery and appurtenant equipment, which are incorporated for the first time into new or existing plant facilities, or which are installed in the place of existing plant

machinery having a lesser productive capacity, and which are directly used in a manufacturing or industrial processing production operation shall be exempt from the sales and use tax. The term "industrial processing production" shall include: the processing and packaging of raw materials, in-process materials, and finished products; the processing and packaging of farm and dairy products for sale; the extraction of minerals, ores, coal, clay, stone, and natural gas; refining; and mining, quarrying, fabricating, and industrial assembling. In summary, the following four (4) specific requirements must be met before machinery qualifies for exemption:

- (1) It must be machinery.
- (2) It must be used directly in the manufacturing process.
- (3) It must be incorporated for the first time into plant facilities established in this state.
- (4) It must not replace other machinery."

[KRS 139.010\(13\)](#) defines "directly used in the manufacturing process or industrial processing process" as the process that commences with the movement of raw materials from storage into a continuous, unbroken, integrated process and ends when the finished product is packaged and ready for sale;

[KRS 139.010\(32\)](#), "Plant facility" means a single location that is exclusively dedicated to manufacturing or industrial processing activities. A location shall be deemed to be exclusively dedicated to manufacturing or industrial processing activities even if retail sales are made there, provided that the retail sales are incidental to the manufacturing or industrial processing activities occurring at the location. The term "plant facility" shall not include any restaurant, grocery store, shopping center, or other retail establishment.

Manufacturers may purchase tangible personal property exempt from sales and use tax that will be resold in the regular course of business, or used, as provided in [KRS 139.470\(9\)](#), in the manufacture of tangible personal property at a plant facility which will be resold. Tangible personal property potentially exempt under [KRS 139.470\(9\)](#) includes raw materials which enter into and become a component part of the manufactured product and certain supplies with a useful life less than one (1) year such as lubricating oils and greases used directly in the manufacturing process.

[KRS 139.470\(22\)](#) provides a sales and use tax exemption for "Gross receipts derived from charges for labor or services to apply, install, repair, or maintain tangible personal property directly used in manufacturing or industrial processing process of:

- (a) Tangible personal property at a plant facility; ...that is not otherwise exempt under subsection (9) of this section or [KRS 139.480\(10\)](#), if the charges for labor or services are separately stated on the invoice, bill of sale, or similar document given to purchaser;"

Separately stated charges for labor to apply, install, repair, or maintain property directly used in manufacturing tangible personal property at a plant facility are not subject to sales and use tax.

[KRS 139.480\(3\)](#) and [103 KAR 30:140](#) provide the partial exemption for energy purchases used in the course of manufacturing, industrial processing, mining, or refining that exceed 3% of the user's annual cost of production. Eligible Energy Direct Pay (EDP) purchases include all energy types used directly in the manufacturing process as well as any related distribution or transmission fees.

III. Facts/Discussion

New forklifts purchased by manufacturers may have a greater lifting capacity than the forklifts being replaced. This increased lifting capacity may in theory allow manufacturers to increase their production on an annualized basis. However, to qualify for the Machinery for New and Expanded Industry exemption, manufacturers must demonstrate that the replacement forklifts increase the manufacturing output by measurable units of production.

Some forklifts may be leased on a short term or on an as needed basis. According to the provisions of KRS 139.010(22)(a)2., eligible machinery must be incorporated into a plant facility in this state for the first time. Therefore, forklifts that are rented for short periods of use that come from a lessor's rotating inventory will not qualify because the forklifts will have been used in multiple locations over time and do not meet this first-time incorporation requirement.

To qualify for the Machinery for New & Expanded Industry Exemption, forklifts must be used directly within the manufacturing process. This direct use is defined in KRS 139.010(13) along with further explanations included in KY Regulation 103 KAR 30:120, Section 2. Raw material storage, in-process storage, post-production storage, and shipping are not activities directly within the manufacturing process. Therefore, forklifts used predominantly or exclusively within these non-production areas of a plant facility are not eligible for the exemption. In addition, forklifts used primarily for performing maintenance even in an area of the facility used for production do not qualify.

The exemptions for industrial supplies, separately stated repair labor, and the partial exemption for energy and energy producing fuels are also limited to forklifts that are directly and predominantly used within the manufacturing process. Items such as grease, coolant, hydraulic fluid, and motor oil may qualify as industrial supplies for use in forklifts that operate directly within the manufacturing process.

In the case of the partial energy exemption under KRS 139.480(3), to claim this exemption, manufacturers must first be approved by the department through the application process that begins with the submission of the [Application for Energy Direct Pay \(EDP\) Authorization, Form 51A109](#). Once approved, the manufacturer provides its energy vendors with proof of its exemption eligibility to cease paying sales and use tax at the point of sale. Then, the EDP holder makes estimated payments directly to the department on the monthly sales and use tax return to satisfy the tax liability on energy purchases below the 3% cost of production and on non-production energy. All estimated payments are reconciled with the calculated liability at the end of the taxpayer's fiscal year with the submission of the [Energy Exemption Annual Return, Form 51A129](#).

IV. Conclusion

1. Do replacement forklifts qualify for the Machinery for New & Expanded Industry Exemption?

Forklifts may perform various functions throughout the plant facility. The fact that a replacement forklift has a greater lifting capacity than the one being replaced does not alone qualify the replacement forklift for the Machinery for New & Expanded Industry exemption. To meet the increased capacity requirement, the manufacturer must demonstrate that there is an increased production by actual units of production as a direct result of the incorporation of the new machinery.

Forklifts that operate predominantly or exclusively in non-manufacturing areas such as in raw material storage, between finished goods and warehouse storage, or to transport manufacturing machinery from the production line to maintenance for repairs do not qualify for the New & Expanded Industry Exemption. Forklifts used to reach manufacturing machinery not accessible at the production floor level for some type of maintenance or forklifts used periodically for building maintenance within the manufacturing area also do not qualify as manufacturing machinery.

Also, forklifts that are not predominantly used directly within the manufacturing process are not eligible for the machinery exemption. For example, forklifts that have multiple uses within the facility but are only used 10%, 15%, or 30% of the time within production do not qualify. To meet the predominant use threshold, forklifts must be used at least 50% of the time directly within the manufacturing process.

Therefore, replacement forklifts that just have an increased lifting capacity without generating increases by actual units of production or that are not exclusively or predominantly used directly with the manufacturing process at a plant facility do not qualify for the Machinery for New & Expanded Industry Exemption.

2. Does an additional forklift included in the fleet for movement of in-process product within the manufacturing area to the packaging area qualify for the Machinery for New & Expanded Industry Exemption?

A new forklift incorporated for the first time into the Kentucky plant facility operations as an addition to the fleet and used exclusively for movement of in-process material in the final phase of production into the packaging area for final wrapping may qualify for the machinery exemption. If the movement into the packaging area is part of the integrated manufacturing process that is continuous and unbroken with movement out of production and into the packaging area for immediate palletizing and shrink wrapping, then this new forklift will qualify.

The manufacturer may issue a [Certificate of Exemption for Machinery for New and Expanded Industry \(Form 51A111\)](#) for property meeting the requirements set forth in the statutes and regulations cited herein.

3. Is the fuel used to power forklifts subject to sales and use tax? Off-road diesel, propane, and battery power are the sources of fuel for these forklifts.

Fuel used to power forklifts that are used directly and predominantly within the manufacturing process may qualify for the partial energy exemption if the manufacturer qualifies for and holds an Energy Direct Pay Authorization. Only fuel consumed directly in the manufacturing process may be considered eligible for the partial exemption. Fuel consumed in non-manufacturing forklifts is non-manufacturing fuel subject to tax. Therefore, manufacturers with the EDP authorization must document their forklift usage and fuel consumption by forklifts within the manufacturing process separate from fuel consumption by forklifts operating outside the manufacturing process and maintain those records for EDP calculation purposes. Further details on the EDP application and reporting process are available in KY Regulation 103 KAR 30:140.

4. Are separately stated labor charges to repair forklifts subject to sales and use tax?

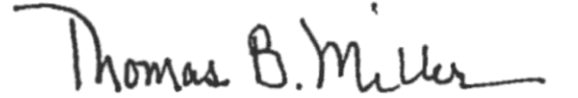
Separately stated labor charges to repair forklifts that are used directly and predominantly in the manufacturing process are not subject to sales and use tax under the provisions of KRS 139.470(22). The repair parts used to perform the repairs are subject to the 6% sales and use tax because repair and replacement parts are excluded from the industrial supply and tool exemption. However, the labor charges to install those taxable parts into forklifts used directly and predominantly within the manufacturing process are exempt if separately stated when charges are billed to the manufacturer. The manufacturer may issue a [Certificate of Exemption Labor or Services on Manufacturing Equipment \(Form 51A360\)](#) or a [Streamlined Sales Tax Certificate of Exemption \(Form 51A260\)](#) for qualifying labor charges.

5. Are supplies such as grease, coolant, hydraulic fluid, and motor oil used to keep forklifts operating properly subject to sales and use tax?

Supplies such as grease, coolant, hydraulic fluid, and motor oil for forklifts used directly and predominantly in the manufacturing process are not subject to sales and use tax if they meet the criteria under the industrial supply exemption in KRS 139.470(9). For example, these supplies must have a useful life of less than a year to qualify for the exemption. Another example of a possible exempt supply for forklifts is antifreeze. The manufacturer may issue a [Resale Certificate \(Form 51A105\)](#), a [Streamlined Sales Tax Certificate of Exemption \(Form 51A260\)](#), or a Multi-Jurisdiction Uniform Sales & Use Tax Resale Certificate for items that meet the industrial supply exemption.

For questions concerning this TAM, contact the Office of Tax Policy at DOR taxpolicy@ky.gov.

KENTUCKY DEPARTMENT OF REVENUE



Thomas B. Miller, Commissioner

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