

REG-1-107, Manufacturing Machinery and Equipment Exemption

* This regulation is currently undergoing review for amendment due to the decisions in [*Kerford Limestone Co. v. Nebraska Department of Revenue*](#) and [*Farmers Cooperative v. Nebraska Department of Revenue*](#). Specifically, the provisions in Reg-1-107.02, 1-107.02A, 1-107.02C, and Reg-1-107.07 are not being applied based on these court decisions.

107.01 The sale, lease, or rental of manufacturing machinery and equipment to a manufacturer for use in manufacturing is exempt from tax.

107.02 Manufacturer means a person who is primarily engaged in the business of manufacturing. Persons are primarily engaged in the business of manufacturing if more of their total annual revenues are derived from the sales of products they manufacture and sell as tangible personal property, or from production labor as defined in Reg-1-082.02A performed on products sold as tangible personal property by other manufacturers than from any other commercial activity.

107.02A A manufacturer does not include any person who derives more of its total annual revenues from selling annexed property, selling services, selling intangible property, making retail sales, generating electricity, producing or transmitting information, programming, or data, providing food or drink service, purifying or transporting water, mining or quarrying, or engaging in any other business than from the business of manufacturing.

107.02B Sales of products or materials that are annexed to real estate, either by the seller or a subcontractor of the seller, are not sales of tangible personal property.

107.02C Total annual revenues means revenues from all of the activities, locations, divisions, departments, or operations of the person, both within and outside this state, and includes sales of annexed property, tangible personal property, services, or intangibles. Total annual revenues are measured over a period of 12 consecutive months, including the month in which the manufacturing machinery and equipment is placed in service.

107.03 Manufacturing means an action, or series of actions, performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing. Manufacturing requires a physical change to the tangible personal property and does not include an increase in the value of a product without a physical change. Manufacturing does not include:

107.03A Generation or transmission of electricity;

107.03B Growing or caring for crops or animal life;

107.03C Mining, quarrying, and any other activity performed in severing raw materials or other property from the ground;

107.03D Preparation of food for immediate consumption;

107.03E Production or transmission of data;

107.03F Production or transmission of information;

107.03G Production or transmission of programming, including computer software;

107.03H Purification or transportation of water;

107.03I Retail operations; or

107.03J Sorting, cleaning, or repackaging of property, or breaking bulk quantities of property into smaller units or packages.

107.04 Manufacturing machinery and equipment used in manufacturing includes:

107.04A Chemicals, solutions, or catalysts when utilized in a mold or die process;

107.04B Computers, software, and related peripheral equipment used to guide, control, operate, or measure the manufacturing process;

107.04C Machinery and equipment used by a manufacturer to produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process even if the produced items are consumed during the manufacturing process, but does not include the chemical catalysts and solutions themselves (See subsection 1-107.05B);

107.04D Machinery and equipment used to maintain the integrity of the product or to maintain the unique environmental conditions necessary for either the product or the manufacturing machinery and equipment. Heating, ventilating, and cooling the workplace to make conditions suitable for employees is not maintaining unique environmental conditions;

107.04E Machinery and equipment used to produce, fabricate, assemble, process, finish, refine, or package tangible personal property for sale;

107.04E(1) Machinery and equipment includes items attached to manufacturing machinery and equipment, which facilitate its operations or functions, such as drill bits or sanding belts.

107.04F Machinery and equipment used to transport, convey, handle, or store the raw materials or components used in manufacturing, or the products produced by the manufacturer for sale. This includes forklifts and other motorized vehicles used within the manufacturing facility, but does not include any containers used to transport the manufactured products to customers. (See Reg-1-107.05D);

107.04G Materials and parts purchased by a manufacturer to construct its own machinery and equipment, or its own molds and dies used in its manufacturing process;

107.04H Molds and dies used to determine the physical characteristics of the finished product or its packaging material;

107.04I Testing equipment used to measure the quality of the finished product. This includes machinery and equipment used during the manufacturing process to measure the quality of the item being manufactured, but does not include any equipment used in research and development to improve existing products or develop new products; and

107.04J Tools powered by sources other than human effort, such as electricity, battery, or compressed air.

107.05 Manufacturing machinery and equipment does NOT include:

107.05A Building materials purchased by a manufacturer to attach, anchor, house, enclose, or supply external power to machinery and equipment used in its manufacturing process;

107.05B Chemicals, solutions, and catalysts, except those utilized in a mold or die process, whether or not such items are essential to the manufacturing process;

107.05C Computers, software, and related peripheral equipment which are not used in guiding, controlling, operating, or measuring the manufacturing process;

107.05D Containers used to transport the manufactured product to customers including, but not limited to, pallets, tanks for welding gases, and bottles. Containers will be taxed or exempted pursuant to the provisions of Reg-1-043, Containers;

107.05E Hand tools. Hand tools means only those tools that are held in the hand and are powered solely by human effort;

107.05F Machinery and equipment used in research and development;

107.05G Office equipment;

107.05H Supplies and other items consumed by a manufacturer whether or not such items are essential to the manufacturing process, such as solvents or cutting oils; and

107.05I Vehicles required to be registered for operation on the roads and highways of this state and items attached to the vehicles.

107.06 Person means any individual, firm, partnership, limited liability company, joint venture, association, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or other group or combination acting as a unit.

107.07 When machinery and equipment is used for both manufacturing and for other purposes, the manufacturing use must be more than 50 percent of the total use to qualify for the exemption specified in this regulation. When a manufacturer claims an exemption for manufacturing machinery and equipment, it must maintain records clearly showing that it used the machinery and equipment more than 50 percent of the time in its manufacturing process.

107.08 Option 2 or Option 3 contractors who purchase and annex manufacturing machinery and equipment for a manufacturer must pay sales or use tax on their cost of the manufacturing machinery and equipment or the parts and components of the manufacturing machinery and equipment. Option 2 and Option 3 contractors may not accept an exemption certificate from a manufacturer for annexed manufacturing machinery and equipment.

107.09 Repair or replacement parts or accessories purchased by a manufacturer and used in maintaining, repairing, or refurbishing manufacturing machinery and equipment are exempt from tax.

107.09A Persons who do not qualify as a manufacturer in any year must pay tax on all purchases of repair parts and repair labor for the manufacturing machinery and equipment made during that year, even if the manufacturing machinery and equipment was exempt when it was purchased.

107.09B Option 2 or Option 3 contractors must pay tax on their purchases of repair or replacement parts used to repair annexed manufacturing machinery and equipment.

107.10 Purchases by a manufacturer of installation, repair, or maintenance services performed on exempt manufacturing machinery and equipment are exempt from tax.

107.11 Purchases by a manufacturer of warranties, guarantees, or maintenance agreements covering exempt manufacturing machinery and equipment are exempt from tax.

107.11A Option 2 or Option 3 contractors must pay tax on their purchases of repair or replacement parts used to fulfill their obligations under these agreements.

107.12 A retailer may make a tax-free sale of manufacturing machinery and equipment and any property or service identified in Reg-1-107.04 when the manufacturer issues the retailer either a properly completed Nebraska exemption certificate or another exemption form approved by the Department of Revenue under Reg-1-014, Exempt Sale Certificate.

107.12A An Option 1 contractor may accept an exemption certificate from a manufacturer and not collect tax on annexed manufacturing machinery and equipment.

(Sections 77-2701.46, 77-2701.47, and 77-2704.22 R.R.S. 2009. June 6, 2011.)