

ATTENTION MANUFACTURERS: OHIO DEPARTMENT OF TAXATION ISSUES PROPOSED CHANGES TO THE MANUFACTURING EXEMPTION RULE

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The Ohio Department of Taxation (“ODT”) recently issued draft changes it is proposing be made to the rule governing the sales and use tax exemption for manufacturers (the “Manufacturing Exemption Rule”). The proposed changes are part of the new mandatory five year rule review process. ODT has asked for comments from taxpayers by April 28, 2017, so time is short for providing such comments.

Background

In the 1980s, successful litigation by taxpayers broadly expanded the sales and use tax exemption for manufacturers. To avoid major revenue shortfalls, a joint legislative committee recommended that ODT work with manufacturers to design a new manufacturing exemption and rule. As a result, a new manufacturing exemption was adopted effective July 1, 1990. The Manufacturing Exemption Rule, Ohio Administrative Code section 5703-9-21, was quickly adopted to assist in understanding the new exemption. The Manufacturing Exemption Rule has been unchanged for 27 years, but has successfully reduced the amount of uncertainty and controversy that plagued the prior manufacturing exemption.

Proposed Changes

Many of ODT’s proposed changes are intended to address necessary legislative updates and modernize the Rule’s language to identify gender-neutral specific pronouns. However, the Rule also adds additional examples which taxpayers might see

as an effort to “codify” ODT’s audit positions which have not yet been tested by the courts. Further, the Rule may be missing some important changes in favor of taxpayers, to clarify the exemption in light of modern manufacturing processes.

The proposed rule is available at the following link: <http://www.tax.ohio.gov/Portals/0/legal/rules/5703-9-21.pdf>

Recommended Action Step

The Manufacturing Exemption Rule is a hallmark guidance for manufacturers in Ohio. Any changes to the Manufacturing Exemption Rule should be closely scrutinized and considered with the same collaborative spirit that the Manufacturing Exemption Rule was originally drafted. Manufacturers should immediately review the proposed rule and provide their comments on the proposed changes to the ODT. Manufacturers may also want to suggest other changes to the Manufacturing Exemption Rule that would help clarify how the manufacturing exemption applies to their current operations.

If you would like to discuss the proposed rule changes and the comment process, please contact one of our tax professionals.

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