

OHIO SALES AND USE TAX MANUFACTURING RULE GETS UPDATED

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As part of the five-year rule review process required for State agencies, the Ohio Department of Taxation (Department) has reviewed and updated (effective 3/24/2019) Ohio Administrative Code (OAC) 5703-9-21, the sales and use tax manufacturing rule (“Rule”). Most of the changes to the Rule are grammatical or gender-neutral revisions.

The following changes were made to update the Rule to reflect statutory changes to Ohio Revised Code (R.C.) 5739.01, 5739.011 and 5739.02:

- The definition of “manufacturer” found in OAC 5703-9-21(B)(4) was changed to include persons that remove soil, dirt, or other contaminants from, or otherwise prepare in a suitable condition for use, towels, linens, articles of clothing, floor mats, mop heads, or other similar items, to be supplied to a consumer as part of laundry and dry cleaning services as defined in division (BB) of section 5739.01 of the Revised Code, only when the towels, linens, articles of clothing, floor mats, mop heads, or other similar items belong to the

provider of the services (see R.C. 5739.011(B)(12)).

- OAC 5703-9-21(C)(12) adds as a thing transferred for use in a manufacturing operation machinery and equipment, detergents, supplies, solvents, and any other tangible personal property located at a manufacturing facility that are used in the process of removing soil, dirt, or other contaminants from, or otherwise preparing in a suitable condition for use, towels, linens, articles of clothing, floor mats, mop heads, or other similar items, to be supplied to a consumer as part of laundry and dry cleaning services as defined in division (BB) of section 5739.01 of the Revised Code, only when the towels, linens, articles of clothing, floor mats, mop heads, or other similar items belong to the provider of the services.
- OAC 5703-9-21(C)(13) adds as a thing transferred for use in a manufacturing operation equipment and supplies used to clean processing equipment that is part of a continuous manufacturing operation to produce milk, ice cream, yogurt, cheese, and similar dairy products for human consumption (see R.C. 5739.011(B)(13)).
- The language in OAC 5703-9-21(D)(8), which indicated that research and development machinery and equipment is not a thing transferred, was removed. While the manufacturing exemption does not exempt research and development machinery and equipment, R.C. 5739.02(B)(42)(i) does exempt qualified research and development equipment.
- OAC 5703-9-21(F) was updated to reflect the proper reference to the R.C. for the printing exemption (5739.01(E)(8) was changed to 5739.02(B)(42)(f)).
- Example 54, which addressed CAD equipment, was replaced with an example addressing ventilation and exhaust systems.
- Example 63 was updated to address equipment or supplies used to clean processing equipment that is part of a continuous manufacturing operation to produce milk.
- Example 64 was updated to address equipment or supplies used to clean a freeze tunnel, processing equipment in the hardening room and roller conveyers that are used as part of a manufacturing operation to produce ice cream.

While not addressed in OAC 5703-9-21, manufacturers should be aware that the

Department announced earlier this year at the 2019 Ohio Tax Conference that pollution control chemicals used as part of an exempt facility (see R.C. 5709.25) are going to be treated as taxable tangible personal property unless such chemicals were listed in the manufacturer's exempt facility application. This is a significant change in long-standing Department policy.

While OAC 5703-9-21 is a good example of cooperation between the Department and the manufacturing industry, the Rule is almost 30 years old. Since manufacturing has changed dramatically over the last three decades, manufacturers should strongly consider working further with the Department to update the Rule, including the Department's treatment of pollution control chemicals, to reflect modern manufacturing practices. In so doing, we can keep Ohio a competitive manufacturing state.

If you have any questions, please contact [Tom Zaino](#), [John Trippier](#) or [any one of the other professionals](#) at Zaino Hall & Farrin LLC.

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