

EXEMPTION GUIDELINES FOR EXPANDING BUSINESSES

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Introduction

The following provides important information for applicants that have been approved as an "expanding" business under the provisions of Section 212.08(5)(b)2., Florida Statutes (F.S.) and Rule 12A-1.096, Florida Administrative Code (F.A.C.). Final approval of the company's exemption or refund as an expanding business can only be made after the required 10 percent increase in productive output by the company has been verified and after an examination of the company's machinery and equipment purchases has been completed.

Qualifying expanding businesses are encouraged to read the text of the exemption statute (s. 212.08(5)(b), F.S.) and the administrative rule (Rule12A-1.096, F.A.C.) for more comprehensive guidance. The text of the sales and use tax statutes and administrative rules can be read on the Department's website at <http://www.myflorida.com/dor/>. To access the statutes and rules, click the link labeled "Revenue Law Library" in the "Quick Links" box. Then, click the "Search" tab at the top of the page. On the line labeled "Search by Document Number," enter 212.08 for the exemption statute or 12A-1.096 for the administrative rule, then click the "Search" box at the bottom of the page.

Temporary Tax Exemption Permit

If the company has been issued a temporary tax exemption permit, the permit's effective date is the date that the company's application was received by this office. The permit's expiration date is the anticipated date of the completion of the installation of the additional and/or replacement expansion project machinery and equipment, based on the information that the company has provided. The company is authorized to extend a copy of the permit to its dealers or suppliers for use in purchasing or leasing qualifying machinery and equipment tax exempt. The company may also authorize its project contractor(s) to make tax exempt purchases of qualifying items from dealers or suppliers on the company's behalf by entering the required information on the bottom portion of a copy of the permit.

The expiration date of an expanding business' temporary tax exemption permit is an estimate based on the best available information about the completion date of the expansion project as declared in the company's application for exemption. If the project identified in the exemption application is completed prior to the expiration date of the permit, then any additional purchases made subsequent to the completion of the specific expansion project may not be exempt, even though the permit has not yet expired.

If the expansion project as declared in the company's application for exemption has not been completed by the expiration date of the permit, the purchases of machinery and equipment for that expansion project will continue to qualify for the exemption. In this event, the company should write to the Department of Revenue at Post Office Box 7443, Tallahassee, Florida 32314-7443, and request an extension of time on its existing exemption permit. The extension request should state the reason(s) why the additional time is needed. When issued, the amended permit will allow the company to continue to extend a valid exemption permit to its suppliers when completing the necessary purchases of machinery and equipment for the expansion project.

Purchases Qualifying for Exemption

The permit **may not** be used for purchases or leases of, or improvements to, real property. However, special concrete foundations for machinery and equipment are considered to be a part of the machinery and equipment itself, and not real property improvements. It is important to understand that the exemption provided in s. 212.08(5)(b), F.S., is limited to industrial machinery and equipment that can be categorized as tangible personal property that has at least a three-year depreciable life. Such property must also be integral to manufacturing, processing, compounding, or producing an article of tangible personal property for sale at the fixed location as required by s. 212.08(5)(b)6.a., F.S. For example, office furniture or office machines are not integral to the production process and will not qualify for exemption. Motor vehicles, such as delivery trucks do not remain at the fixed location and will also not qualify for exemption. For a list of types of machinery and equipment that will or will not qualify for exemption, please see the provisions of Rule 12A-1.096(8), F.A.C.

The company is cautioned that it is fully responsible for paying sales and use taxes on items that do not qualify for exemption, where such items were purchased tax exempt by the company or by the company's contractor(s) for this project. Any misuse of this exemption authority subjects the company or the company's contractor to payment of the tax plus a mandatory 200 percent penalty and is a third degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Purchases Made Prior to Application

The exemption from sales and use taxes pursuant to s. 212.08(5)(b), F.S., is only granted after the application process. In the event the company completed purchases prior to filing an exemption application, the tax was due at the time of those purchases. The tax should have either been paid to the vendor, if the vendor was registered for Florida sales tax purposes, or accrued and remitted directly to the Department, if the vendor was not registered for Florida sales tax purposes. If the tax was not paid or accrued, then those purchases would be subject to penalties and interest through the date the company's application was received.

Lease Agreements

The exemption on purchases of industrial machinery and equipment also extends to the leasing of such items. The exemption is applicable to the entire initial term of the lease, even though that term may extend beyond the expiration date of the permit. However, any lease payments resulting from a renewal or extension of the original lease agreement are fully taxable, as is any payment for the purchase of the machinery at the end of the lease period. It should be noted that the point at which tax is imposed would differ for each lease type. For a capital lease, the tax is due in full at the time the lease agreement is entered into or when the property comes to rest in this state, if at a later date. For an operating lease, tax is due on each lease payment.

Productive Output Measurement

Pursuant to s. 212.08(5)(b)2., F.S., expanding businesses are required to show an increase in productive output of not less than 10 percent in order to qualify for the exemption. Section 212.08(5)(b)6.b., F.S., specifies that "[i]ncreases in productive output shall be measured by the output for 12 continuous months selected by the expanding business following the completion of installation of such machinery or equipment [**project completion date**] over the output for the 12 continuous months immediately preceding such installation [**project beginning date**]. However, in no case may such time period begin later than 2 years following the completion of installation of the new machinery and equipment."

The company's exemption application must indicate a physical unit [**unit of measurement**] that would be used to show the required increase in productive output. Accordingly, the production data collected by the company should be measured in the stated unit of measurement in order to verify the minimum 10 percent productivity increase requirement. Any change in that measurement basis must be supported by a valid reason and must be accepted and approved by the Department.

It is important to emphasize that the purchases of machinery and equipment under this exemption are subject to audit. It is the company's responsibility to document that the required increase in productive output has been achieved for exemption. If productive output cannot be shown to have increased by at least 10 percent, the amount of taxes exempted shall immediately be due and payable to the Department together with the appropriate interest and penalty, computed from the date of purchase. (See the below sections "Refund Process" and "When to File for a Refund.")

Change in Exemption Law

The 2012 Florida Legislature passed House Bill 7087, which was then enacted as Chapter 2012-32, Laws of Florida. Section 8 of that law, which will become effective January 1, 2013, affects the productive output requirement for expanding manufacturing businesses under the provisions of s. 212.08(5)(b), F.S. Under the new law, expanding manufacturing businesses will only be required to affirmatively show an increase in productive output of 5 percent. It is important to understand that any expansion project that is completed prior to the effective date of January 1, 2013, will be subject to the 10 percent productive output increase requirement.

Refund Process

If purchases of machinery and equipment have already been completed prior to the company's tentative approval of an exemption, the company may receive the exemption through a refund of previously paid sales or use tax on qualifying items of machinery and equipment. Applications for refund by new and expanding businesses are subject to the provisions of ss. 212.08(5)(b), 213.255, and 215.26, F.S., and Rule 12A-1.096, F.A.C. The company may claim a refund for previously paid tax on purchases of qualifying machinery and equipment by filing an Application for Refund, form DR-26S. Form DR-26S can be obtained on the Department's website at: <http://www.myflorida.com/dor/forms/download/!refunds.html>. The form may then be printed out and manually completed and mailed in, or the refund claim may be filed online by clicking the appropriate link. If the latter method is selected, please note that the claim must be followed with a copy of the letter granting tentative approval for tax exemption, along with any other documentation requested by the Department's Refund Subprocess to support the refund claim.

For a refund application to be considered complete, the following minimum documentation must be submitted along with the refund application: (1) a photocopy of the company's exemption approval letter; (2) copies of the invoices relating to the qualifying machinery and equipment; (3) copies of the certified statement from vendors, if tax was paid to the vendors (see below); (4) copies of the applicable tax returns and purchase journals, if the tax was self-accrued; and (5), a copy of the applicable production reports or other documentation that shows the required increase in productive output. If the purchase documentation associated with the refund application is too voluminous to submit, then a well-prepared worksheet supporting the amount of the refund claim should be submitted. A field audit of the original documentation may be determined to be necessary in order to verify the validity and the amount of the refund claim.

When to File for a Refund

It is important to emphasize that, pursuant to Rule 12A-1.096(6)(e)2., F.A.C., a refund application may not be processed for payment and will not accrue interest unless that application is complete and the information in the claim has been verified. Accordingly, a refund application should not be filed until such time as all of the above-indicated documentation can be submitted. It is most important that the documentation can substantiate that the business has now increased the productive output of the facility by not less than 10 percent. Submission of an application prior to that time may significantly delay processing of the refund claim, or the refund claim may have to be denied.

Certified Statements

Pursuant to Rule 12A-1.096(6), F.A.C., before the owner of the qualifying new or expanding business may request a refund, it is necessary to obtain certified statements from the vendors, contractors, and subcontractors who supplied or provided the qualifying machinery and equipment and paid the sales tax to the State of Florida. The following page provides a suggested format for such a certified statement. The certified statement will not be necessary for those purchases where the company self-accrued and remitted the tax directly to the State of Florida. However, evidence of payment of the tax must still be provided.

Certified Statement

_____ (Dealer/Lessor),
incorporated in the State of _____, its undersigned officer
who is duly authorized, hereby certifies to _____ (Purchaser/Lessee),
it has paid sales tax to the Department of Revenue, State of Florida, totaling the sum of
\$ _____. Said taxes were collected by the above Dealer/Lessor upon the sales of
tangible personal property as evidenced by the attached invoice(s).

The Dealer/Lessor further certifies the sales tax for the attached invoice(s) was paid to the State
of Florida in the month following the date of sale under sales tax number _____.

Dated at _____ COUNTY, FLORIDA,
this _____ day of _____, 20_____.

AUTHORIZED OFFICER OF COMPANY

BY: _____

TITLE: _____