



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB1121

Introduced 2/11/2009, by Rep. Linda Chapa LaVia

SYNOPSIS AS INTRODUCED:

35 ILCS 105/3-50
35 ILCS 120/2-45

from Ch. 120, par. 439.3-50
from Ch. 120, par. 441-45

Amends the Use Tax Act. Extends the exemption for purchases of production related tangible personal property through June 30, 2017 (now, through June 30, 2008). Provides that the credit is awarded through a credit memorandum. Requires the Department of Revenue to report annually concerning the exemption. Imposes conditions on rulemaking. Amends the Retailers' Occupation Tax Act. Eliminates language concerning credits for production related tangible personal property. Effective immediately.

LRB096 04709 RCE 14772 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Use Tax Act is amended by changing Section
5 3-50 as follows:

6 (35 ILCS 105/3-50) (from Ch. 120, par. 439.3-50)

7 Sec. 3-50. Manufacturing and assembly exemption. The
8 manufacturing and assembling machinery and equipment exemption
9 includes machinery and equipment that replaces machinery and
10 equipment in an existing manufacturing facility as well as
11 machinery and equipment that are for use in an expanded or new
12 manufacturing facility. The machinery and equipment exemption
13 also includes machinery and equipment used in the general
14 maintenance or repair of exempt machinery and equipment or for
15 in-house manufacture of exempt machinery and equipment. For the
16 purposes of this exemption, terms have the following meanings:

17 (1) "Manufacturing process" means the production of an
18 article of tangible personal property, whether the article
19 is a finished product or an article for use in the process
20 of manufacturing or assembling a different article of
21 tangible personal property, by a procedure commonly
22 regarded as manufacturing, processing, fabricating, or
23 refining that changes some existing material into a

1 material with a different form, use, or name. In relation
2 to a recognized integrated business composed of a series of
3 operations that collectively constitute manufacturing, or
4 individually constitute manufacturing operations, the
5 manufacturing process commences with the first operation
6 or stage of production in the series and does not end until
7 the completion of the final product in the last operation
8 or stage of production in the series. For purposes of this
9 exemption, photoprocessing is a manufacturing process of
10 tangible personal property for wholesale or retail sale.

11 (2) "Assembling process" means the production of an
12 article of tangible personal property, whether the article
13 is a finished product or an article for use in the process
14 of manufacturing or assembling a different article of
15 tangible personal property, by the combination of existing
16 materials in a manner commonly regarded as assembling that
17 results in an article or material of a different form, use,
18 or name.

19 (3) "Machinery" means major mechanical machines or
20 major components of those machines contributing to a
21 manufacturing or assembling process.

22 (4) "Equipment" includes an independent device or tool
23 separate from machinery but essential to an integrated
24 manufacturing or assembly process; including computers
25 used primarily in a manufacturer's computer assisted
26 design, computer assisted manufacturing (CAD/CAM) system;

1 any subunit or assembly comprising a component of any
2 machinery or auxiliary, adjunct, or attachment parts of
3 machinery, such as tools, dies, jigs, fixtures, patterns,
4 and molds; and any parts that require periodic replacement
5 in the course of normal operation; but does not include
6 hand tools. Equipment includes chemicals or chemicals
7 acting as catalysts but only if the chemicals or chemicals
8 acting as catalysts effect a direct and immediate change
9 upon a product being manufactured or assembled for
10 wholesale or retail sale or lease.

11 (5) "Production related tangible personal property"
12 means all tangible personal property that is used or
13 consumed by the purchaser in a manufacturing facility in
14 which a manufacturing process takes place and includes,
15 without limitation, tangible personal property that is
16 purchased for incorporation into real estate within a
17 manufacturing facility and tangible personal property that
18 is used or consumed in activities such as research and
19 development, preproduction material handling, receiving,
20 quality control, inventory control, storage, staging, and
21 packaging for shipping and transportation purposes.
22 "Production related tangible personal property" does not
23 include (i) tangible personal property that is used, within
24 or without a manufacturing facility, in sales, purchasing,
25 accounting, fiscal management, marketing, personnel
26 recruitment or selection, or landscaping or (ii) tangible

1 personal property that is required to be titled or
2 registered with a department, agency, or unit of federal,
3 State, or local government.

4 The manufacturing and assembling machinery and equipment
5 exemption includes production related tangible personal
6 property that is purchased on or after July 1, 2007 and on or
7 before June 30, 2017 ~~2008~~. This use tax ~~The~~ exemption for
8 production related tangible personal property shall be awarded
9 to the taxpayer in the form of a credit memorandum issued by
10 the Department and is subject to both of the following
11 limitations:

12 (1) Purchases of production related tangible personal
13 property made on or after July 1, 2007 and on or before
14 June 30, 2017 are eligible for a credit memorandum equal to
15 ~~The maximum amount of the exemption for any one taxpayer~~
16 ~~may not exceed 5% of the purchase price of production~~
17 ~~related tangible personal property that is purchased on or~~
18 ~~after July 1, 2007 and on or before June 30, 2008~~. A credit
19 under Section 3-85 of this Act may not be earned by the
20 purchase of production related tangible personal property
21 for which a credit memorandum ~~an exemption~~ is received
22 under this Section.

23 (2) The maximum aggregate amount of credit memorandums
24 ~~the exemptions~~ for production related tangible personal
25 property awarded under this Act ~~and the Retailers'~~
26 ~~Occupation Tax Act~~ to all taxpayers may not exceed

1 \$10,000,000. If the claims for the credit memorandums
2 ~~exemption~~ exceed \$10,000,000, then the Department shall
3 reduce the amount of the credit memorandum ~~exemption~~ to
4 each taxpayer on a pro rata basis.

5 By October 1, 2009, and each year thereafter until October
6 1, 2017 the Department shall provide a report to the General
7 Assembly that indicates the amount of production related
8 tangible personal property purchases made in the previous
9 fiscal year reported to the Department for purposes of this
10 exemption, the amount of credits provided, and the estimated
11 impact of providing an exemption for production related
12 tangible personal property from use and occupation taxes.

13 The Department may adopt rules to implement and administer
14 the exemption for production related tangible personal
15 property. Rulemaking authority to implement this amendatory
16 Act of the 96th General Assembly, if any, is conditioned on the
17 rules being adopted in accordance with all provisions of the
18 Illinois Administrative Procedure Act and all rules and
19 procedures of the Joint Committee on Administrative Rules; any
20 purported rule not so adopted, for whatever reason, is
21 unauthorized.

22 The manufacturing and assembling machinery and equipment
23 exemption includes the sale of materials to a purchaser who
24 produces exempted types of machinery, equipment, or tools and
25 who rents or leases that machinery, equipment, or tools to a
26 manufacturer of tangible personal property. This exemption

1 also includes the sale of materials to a purchaser who
2 manufactures those materials into an exempted type of
3 machinery, equipment, or tools that the purchaser uses himself
4 or herself in the manufacturing of tangible personal property.
5 This exemption includes the sale of exempted types of machinery
6 or equipment to a purchaser who is not the manufacturer, but
7 who rents or leases the use of the property to a manufacturer.
8 The purchaser of the machinery and equipment who has an active
9 resale registration number shall furnish that number to the
10 seller at the time of purchase. A user of the machinery,
11 equipment, or tools without an active resale registration
12 number shall prepare a certificate of exemption for each
13 transaction stating facts establishing the exemption for that
14 transaction, and that certificate shall be available to the
15 Department for inspection or audit. The Department shall
16 prescribe the form of the certificate. Informal rulings,
17 opinions, or letters issued by the Department in response to an
18 inquiry or request for an opinion from any person regarding the
19 coverage and applicability of this exemption to specific
20 devices shall be published, maintained as a public record, and
21 made available for public inspection and copying. If the
22 informal ruling, opinion, or letter contains trade secrets or
23 other confidential information, where possible, the Department
24 shall delete that information before publication. Whenever
25 informal rulings, opinions, or letters contain a policy of
26 general applicability, the Department shall formulate and

1 adopt that policy as a rule in accordance with the Illinois
2 Administrative Procedure Act.

3 (Source: P.A. 95-707, eff. 1-11-08.)

4 Section 10. The Retailers' Occupation Tax Act is amended by
5 changing Section 2-45 as follows:

6 (35 ILCS 120/2-45) (from Ch. 120, par. 441-45)

7 Sec. 2-45. Manufacturing and assembly exemption. The
8 manufacturing and assembly machinery and equipment exemption
9 includes machinery and equipment that replaces machinery and
10 equipment in an existing manufacturing facility as well as
11 machinery and equipment that are for use in an expanded or new
12 manufacturing facility.

13 The machinery and equipment exemption also includes
14 machinery and equipment used in the general maintenance or
15 repair of exempt machinery and equipment or for in-house
16 manufacture of exempt machinery and equipment. For the purposes
17 of this exemption, terms have the following meanings:

18 (1) "Manufacturing process" means the production of an
19 article of tangible personal property, whether the article
20 is a finished product or an article for use in the process
21 of manufacturing or assembling a different article of
22 tangible personal property, by a procedure commonly
23 regarded as manufacturing, processing, fabricating, or
24 refining that changes some existing material or materials

1 into a material with a different form, use, or name. In
2 relation to a recognized integrated business composed of a
3 series of operations that collectively constitute
4 manufacturing, or individually constitute manufacturing
5 operations, the manufacturing process commences with the
6 first operation or stage of production in the series and
7 does not end until the completion of the final product in
8 the last operation or stage of production in the series.
9 For purposes of this exemption, photoprocessing is a
10 manufacturing process of tangible personal property for
11 wholesale or retail sale.

12 (2) "Assembling process" means the production of an
13 article of tangible personal property, whether the article
14 is a finished product or an article for use in the process
15 of manufacturing or assembling a different article of
16 tangible personal property, by the combination of existing
17 materials in a manner commonly regarded as assembling that
18 results in a material of a different form, use, or name.

19 (3) "Machinery" means major mechanical machines or
20 major components of those machines contributing to a
21 manufacturing or assembling process.

22 (4) "Equipment" includes an independent device or tool
23 separate from machinery but essential to an integrated
24 manufacturing or assembly process; including computers
25 used primarily in a manufacturer's computer assisted
26 design, computer assisted manufacturing (CAD/CAM) system;

1 any subunit or assembly comprising a component of any
2 machinery or auxiliary, adjunct, or attachment parts of
3 machinery, such as tools, dies, jigs, fixtures, patterns,
4 and molds; and any parts that require periodic replacement
5 in the course of normal operation; but does not include
6 hand tools. Equipment includes chemicals or chemicals
7 acting as catalysts but only if the chemicals or chemicals
8 acting as catalysts effect a direct and immediate change
9 upon a product being manufactured or assembled for
10 wholesale or retail sale or lease.

11 ~~(5) "Production related tangible personal property"~~
12 ~~means all tangible personal property that is used or~~
13 ~~consumed by the purchaser in a manufacturing facility in~~
14 ~~which a manufacturing process takes place and includes,~~
15 ~~without limitation, tangible personal property that is~~
16 ~~purchased for incorporation into real estate within a~~
17 ~~manufacturing facility and tangible personal property that~~
18 ~~is used or consumed in activities such as research and~~
19 ~~development, preproduction material handling, receiving,~~
20 ~~quality control, inventory control, storage, staging, and~~
21 ~~packaging for shipping and transportation purposes.~~
22 ~~"Production related tangible personal property" does not~~
23 ~~include (i) tangible personal property that is used, within~~
24 ~~or without a manufacturing facility, in sales, purchasing,~~
25 ~~accounting, fiscal management, marketing, personnel~~
26 ~~recruitment or selection, or landscaping or (ii) tangible~~

1 ~~personal property that is required to be titled or~~
2 ~~registered with a department, agency, or unit of federal,~~
3 ~~State, or local government.~~

4 ~~The manufacturing and assembling machinery and equipment~~
5 ~~exemption includes production related tangible personal~~
6 ~~property that is purchased on or after July 1, 2007 and on or~~
7 ~~before June 30, 2008. The exemption for production related~~
8 ~~tangible personal property is subject to both of the following~~
9 ~~limitations:~~

10 ~~(1) The maximum amount of the exemption for any one~~
11 ~~taxpayer may not exceed 5% of the purchase price of~~
12 ~~production related tangible personal property that is~~
13 ~~purchased on or after July 1, 2007 and on or before June~~
14 ~~30, 2008. A credit under Section 3-85 of this Act may not~~
15 ~~be earned by the purchase of production related tangible~~
16 ~~personal property for which an exemption is received under~~
17 ~~this Section.~~

18 ~~(2) The maximum aggregate amount of the exemptions for~~
19 ~~production related tangible personal property awarded~~
20 ~~under this Act and the Retailers' Occupation Tax Act to all~~
21 ~~taxpayers may not exceed \$10,000,000. If the claims for the~~
22 ~~exemption exceed \$10,000,000, then the Department shall~~
23 ~~reduce the amount of the exemption to each taxpayer on a~~
24 ~~pro rata basis.~~

25 ~~The Department may adopt rules to implement and administer the~~
26 ~~exemption for production related tangible personal property.~~

1 The manufacturing and assembling machinery and equipment
2 exemption includes the sale of materials to a purchaser who
3 produces exempted types of machinery, equipment, or tools and
4 who rents or leases that machinery, equipment, or tools to a
5 manufacturer of tangible personal property. This exemption
6 also includes the sale of materials to a purchaser who
7 manufactures those materials into an exempted type of
8 machinery, equipment, or tools that the purchaser uses himself
9 or herself in the manufacturing of tangible personal property.
10 The purchaser of the machinery and equipment who has an active
11 resale registration number shall furnish that number to the
12 seller at the time of purchase. A purchaser of the machinery,
13 equipment, and tools without an active resale registration
14 number shall furnish to the seller a certificate of exemption
15 for each transaction stating facts establishing the exemption
16 for that transaction, and that certificate shall be available
17 to the Department for inspection or audit. Informal rulings,
18 opinions, or letters issued by the Department in response to an
19 inquiry or request for an opinion from any person regarding the
20 coverage and applicability of this exemption to specific
21 devices shall be published, maintained as a public record, and
22 made available for public inspection and copying. If the
23 informal ruling, opinion, or letter contains trade secrets or
24 other confidential information, where possible, the Department
25 shall delete that information before publication. Whenever
26 informal rulings, opinions, or letters contain a policy of

1 general applicability, the Department shall formulate and
2 adopt that policy as a rule in accordance with the Illinois
3 Administrative Procedure Act.

4 (Source: P.A. 95-707, eff. 1-11-08; revised 10-23-08.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.