

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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Manufacturers' Machinery and Equipment Exemption — Devices

The Department has issued a series of excise tax advisories (ETAs) to address questions regarding the retail sales and use tax exemption provided by RCW 82.08.02565 and 82.12.02565, commonly referred to as the manufacturers' machinery and equipment exemption (M&E exemption). This ETA is issued to address the application of the M&E exemption to devices, including books and computer software. Please refer to ETA 3117.2009 for a current list of the issues covered by this series.

In addition to the issues discussed in this ETA series, machinery and equipment must also meet the other requirements of the statutes to be eligible for the exemption. For example, some of the requirements include:

- Purchaser/User must be a manufacturer, processor for hire, or a tester for a manufacturer or processor for hire,
- Must purchase machinery or equipment (devices, industrial fixtures, support facilities, pollution control equipment),
- The machinery or equipment must be used directly in a manufacturing, research and development, or testing operation,
- The machinery or equipment must have a useful life of one year or more, and
- The machinery or equipment must be used more than 50% of the time on an eligible activity.

Therefore, readers are advised that RCW 82.08.02565, RCW 82.12.02565, and WAC 458-20-13601 should also be referenced when making determinations about taxability.

The M&E exemption defines "machinery and equipment" as "industrial fixtures, devices, and support facilities." Questions have been raised about the meaning of the term "device," particularly in regard to whether books and computer software qualify for the M&E exemption. The issue involves the definition of "machinery and equipment," and because that definition applies broadly to the whole exemption, the analysis and outcome is the same regardless of the type of operation in question.

The statute does not provide a definition of "device." Device is defined in Rule 13601, the M&E rule. The examples given in the rule reflect the notion that the phrase "machinery and equipment" has a meaning within the context of an industrial setting. In that context "machinery and equipment" do work and have an applied function.

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It is an established rule of statutory interpretation that words in a statute are given their ordinary and common meaning and that courts and others may resort to dictionaries to determine the meaning of statutory language. The common dictionary definitions of machinery and equipment, device, and book indicate that books are not within the scope of the exemption. For example, the Webster's II New Riverside University Dictionary defines machinery as "machines or machine parts in general." Machine is defined as "a system, usu. of rigid bodies, constructed and connected to change, transmit, and direct applied forces in a predetermined way to accomplish a particular objective, as performance of useful work." The American Heritage Dictionary of the English Language: Fourth Edition 2000 uses this definition of device: 1. A contrivance or an invention serving a particular purpose, especially a machine used to perform one or more relatively simple tasks.

Rule 13601 defines device as "an item that is not attached to the building or site" and provides examples that are ordinarily considered to be equipment or machinery. The examples in Rule 13601 are "[f]orklifts, chainsaws, air compressors, clamps, free standing shelving, software, ladders, wheelbarrows, and pulleys." These examples fit within the common dictionary definition of "machinery and equipment" and "device."

Books

In order to be eligible as a device the property has to perform a task and do work. Books do not meet the definition of device. The American Heritage Dictionary of the English Language, Fourth Edition defines "book" as "[a] set of written, printed, or blank pages fastened along one side and encased between protective covers; and Black's Law Dictionary, Fifth Edition defines it as "[a]n assembly or concourse of ideas expressed in words." Similarly, libraries and magazines do not meet the definition of device. Books are used for reference and to assist in or guide or control decision making but are not used by a person in the same manner as machinery and equipment, which have an applied function.

Computer Software

Computer software satisfies Rule 13601's definition of device because it performs a task and is also not attached to a building or site. Consequently, computer software can qualify for the M&E exemption if it meets a used directly test. The issue is whether the computer software performs a task in relation to the qualifying operation. For example, a computer software program that controls the operation of equipment that cuts logs into lumber qualifies for the M&E exemption. It performs a task, the control of a piece of eligible machinery, and is used directly in the manufacturing operation. On the other hand, a CD-ROM of a repair manual for this equipment does not qualify for the M&E exemption because the computer software does not perform a task in the manufacturing operation. The Department uses the definition of "computer software" in RCW 82.04.215(2), which is as follows:

"Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment *to perform a task*. [Emphasis added.]
