

# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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## **Manufacturers' Machinery and Equipment Exemption — Rental of Tangible Personal Property and Providing Tangible Personal Property Along With an Operator**

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 the activities of renting tangible personal property and providing tangible personal property along with an operator. 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 is available for the sale or use of certain machinery and equipment used directly in a manufacturing operation. "Machinery and equipment" is defined in the law to be "industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof."

Questions have been raised regarding the eligibility of the "renting or leasing of tangible personal property to consumers" and the "providing tangible personal property along with an operator" for the M&E exemption. Both activities are included in the definition of "retail sale" in RCW 82.04.050(4)(a).

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***Renting or Leasing of Tangible Personal Property***

The “renting or leasing of tangible personal property,” sometimes referred to as a bare rental or true lease, is a sale of tangible personal property. If the lease covers an extended period it is considered to be multiple sales of the same tangible personal property. The renting or leasing of tangible personal property, whether amounting to a single sale or multiple sales of the same tangible personal property, is eligible for the M&E exemption if all other conditions of the exemption are satisfied. For example, the rental of a crane on a bare rental basis to a manufacturer, whose employee operates the crane to move equipment to the top of a building, may be eligible for the M&E exemption.

***Providing Tangible Personal Property along with an Operator***

“Providing tangible personal property along with an operator” is a separate and distinct activity from the “renting or leasing of tangible personal property.” Providing tangible personal property along with an operator” is a sale of a service and not a sale of tangible personal property. While the seller is providing equipment along with the equipment operator, the customer is purchasing the knowledge, skills, and expertise of an operator needed to operate the equipment at the customer’s direction. Because “providing tangible personal property along with an operator” is not a sale of tangible personal property, it is not eligible for the M&E exemption. For example, manufacturer hires a company to provide a crane with operator to move equipment to the top of a building. While the company’s employee operates the crane, the equipment is actually installed by manufacturer’s employees. The purchase of the crane with operator service is not eligible for the M&E exemption.

The tax application of any scenario depends on the facts and circumstances of the particular situation. For example, consider the situation where a manufacturer hires a company to provide a crane with operator to move equipment to the top of a building and the personnel to install the equipment. In this case, the purchased services may be eligible for the M&E exemption because the company hired by the manufacturer is responsible for installing the equipment. Refer to WAC 458-20-211 for additional guidance for distinguishing when a person is renting or leasing tangible personal property, providing tangible personal property along with an operator, or is performing construction or installation services.

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