

**Vermont Department of Taxes**  
**TECHNICAL BULLETIN**

**TB-09**

**TAX: SALES AND USE**

**ISSUED:** December 18, 1997

**SUBJECT: SALES TAX EXEMPTIONS FOR MATERIALS USED IN THE  
CONSTRUCTION OF MANUFACTURING OR DOWNTOWN  
REDEVELOPMENT FACILITIES**

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This bulletin addresses questions which have been raised concerning 32 V.S.A. §9741(38) and (39). It supplements but does not supersede Bulletin TB-08 issued July 24, 1997.

Effective July 1, 1997, the following sales became exempt from Vermont sales and use tax:

Sales of building materials within any three consecutive calendar years in excess of one million dollars in purchase value, used in the construction or expansion of facilities which are used exclusively, except for isolated or occasional uses, for the manufacture of tangible personal property for sale. 32 V.S.A. § 9741 (38).

Sales of building materials within any three consecutive calendar years, in excess of one million dollars in purchase value, incorporated into a downtown redevelopment project as defined by rule by the commissioner. 32 V.S.A. § 9741 (39).

The following questions have been raised:

*Q. Is the exemption limited to the construction of structures or does it include site preparation work?*

**A.** The terms “project” and “facility” are not limited to structures. Gravel, fill, culverts, paving materials and similar items are “building materials.”

*Q. Does the language of subsection 39, requiring building materials to be incorporated into a downtown redevelopment project create a different standard than the language of subsection 38, requiring that the materials be used in the construction of a manufacturing facility.*

**A.** No. The Department will not require that a builder maintain records showing whether building materials such as lumber, fasteners, roofing, masonry, or other property normally incorporated into buildings or site improvements are actually incorporated into a project. These types of items will be assumed to be exempt if consumed in the construction of a downtown redevelopment project even though they are used as forming materials, temporary structures, or other uses not actually incorporated into the project. Therefore, the same types of materials will be exempt under subsection 39 as under subsection 38.

*Q. Are supplies other than building materials exempt?*

A. No. Supplies such as fuel, signs, engineering tape, saw blades, etc. consumed in the construction of real property owned by the state, the federal government or certain exempt organizations are exempt under the language of 32 V.S.A. § 9743. The exemption for manufacturing facilities and downtown development projects do not contain an exemption for supplies other than building materials.

*Q. Is the rental or use of forms, staging or other reusable equipment exempt?*

A. No. Property not consumed in the construction will always be taxable.

*Q. Is a facility used exclusively for manufacturing if it contains administrative offices, research facilities, parking lots, etc. (activities which are not “indirect manufacturing” under regulation 1.9741(34))? (1.9741(34) is the regulation covering the exemption for fuel used in manufacturing.)*

A. A facility is used “exclusively” for manufacturing if direct manufacturing activities as defined by 32 V.S.A. §9741(14) are conducted on the site and other activity on the site is limited to 1) indirect manufacturing activities as defined by regulation 1.9741(34), 2) activity which directly supports the manufacturing personnel (training, cafeterias, parking, break areas, child care, etc.), and 3) activity such as marketing or distribution of the product, research and development of product, or management of the manufacturing operation which are activities traditionally conducted at a manufacturing site.

Retail stores, support for employees performing other functions, or activities not traditionally conducted on the manufacturing site are not manufacturing for the purposes of this exemption. If a facility is used for these purposes, except on an occasional or isolated basis, it does not qualify.

*Q. Can the expansion of a facility qualify if the expansion does not include direct manufacturing operations?*

A. Yes. As long as direct manufacturing is conducted at the facility, any construction or expansion will qualify. The expansion could be limited to components of the facility used for warehousing, research and development, or other ancillary activity.

*Q. Does a facility have to be a contiguous piece of property?*

A. Yes. For example, if a warehouse is nearby but not on land contiguous with the site of the direct manufacturing operations, expansion of the warehouse would not qualify for the exemption. Likewise, if direct manufacturing is conducted at two noncontiguous sites, either or both sites may qualify separately but each would be taxable to the extent of the first \$1,000,000 spent to construct or expand that facility. A manufacturer may, however define its manufacturing facility to be less than an entire contiguous property. For example if part of a contiguous property is used for a retail store, other components of the site may still qualify as a facility which is used exclusively for manufacturing.

**Q.** *Is the exemption for manufacturing facilities limited to a single project?*

**A.** No. All construction or expansion on the qualifying manufacturing facility during the three calendar year period qualifies, even if done in separate areas and under separate contracts.

**Q.** *Does the construction or expansion of a manufacturing facility have to create new or larger building, or can an existing building be renovated?*

**A.** In general, the exemption will not be allowed unless the facility is new or expanded. If a building is completely renovated, creating a new utility or capacity, the renovation will qualify. Maintenance or repairs, even if capitalized, which only maintain the utility or capacity of an existing facility will not qualify.

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