

**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

560-12-2-.64. Energy Necessary and Integral to Manufacturing.

(1) Purpose. This Rule addresses the sales and use tax exemptions for energy used in manufacturing.

(2) Definitions. The terms defined in Rule 560-12-2-.62 entitled "Manufacturing Machinery and Equipment, Industrial Materials, and Packaging Supplies" apply to this Rule. In addition, for purposes of this Rule:

(a) "Competitive project of regional significance" means the location or expansion of some or all of a business enterprise's operations in Georgia where the Department of Economic Development determines that the project would have a significant regional impact.

(b) "Energy" means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property. The term excludes energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

(3) Exemption under O.C.G.A § 48-8-3.2.

(a) Requirements. Except as otherwise provided in this paragraph, the sale and use of energy are exempt from sales and use tax if the energy is:

1. necessary and integral to the manufacture of tangible personal property and
2. sold, used, stored, or consumed at a manufacturing plant in Georgia.

(b) Energy used to produce electricity. This exemption does not apply to energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

(c) Sales and use tax for educational purposes. Energy otherwise exempt under O.C.G.A § 48-8-3.2 is not exempt from the sales and use tax for educational purposes levied pursuant to Part 2 of Article 3 of Chapter 8 and Article VIII, Section VI, Paragraph IV of the Constitution or from local sales and use taxes for educational purposes authorized by or pursuant to local constitutional amendment.

(d) Phase-in period. Except as provided in subsections (b), (c), and (e) of this paragraph, such sale and use of energy qualify for a phased-in exemption in accordance with the following schedule:

1. Transactions occurring during the 2013 calendar year qualify for a 25 percent exemption.
2. Transactions occurring during the 2014 calendar year qualify for a 50 percent exemption.
3. Transactions occurring during the 2015 calendar year qualify for a 75 percent exemption.

4. Transactions occurring on or after January 1, 2016, qualify for a 100 percent exemption.

(e) Competitive projects of regional significance.

1. Energy necessary and integral to manufacturing. Beginning April 19, 2012, manufacturers qualifying as a competitive project of regional significance are exempt from all state and local sales and use tax on the sale and use of energy that is necessary and integral to the manufacture of tangible personal property, except as provided in subparagraphs (b) and (c). The phase-in period set forth in subsection (d) does not apply.

2. Energy used in construction. In addition to the exemption in O.C.G.A. § 48-8-3.2, for projects approved by the Department of Economic Development during the time period of January 1, 2012 through June 30, 2016, sales of energy used for and in the construction of a competitive project of regional significance are exempt from all state and local sales and use tax pursuant to O.C.G.A. § 48-8-3(93), including sales and use taxes for educational purposes.

(4) Exemption under the Transportation Investment Act of 2010 and the Transportation Funding Act of 2015.

(a) Requirements. Except as otherwise provided in this paragraph, the sale and use of energy are exempt from the tax imposed by the Transportation Investment Act of 2010 (O.C.G.A. Title 48, Chapter 8, Article 5) and the Transportation Funding Act of 2015 (O.C.G.A. Title 48, Chapter 8, Article 5A) if the energy is:

1. necessary and integral to the manufacture of tangible personal property and

2. sold, used, stored, or consumed at a manufacturing plant.

(b) No phase-in period. This exemption is not subject to a phase-in period.

(c) Energy used to produce electricity. This exemption does not apply to energy purchased by a manufacturer primarily engaged in producing electricity for resale.

(5) Scope of the exemptions: Necessary and integral to the manufacture of tangible personal property. Energy used for any purpose at a manufacturing plant is considered necessary and integral to the manufacture of tangible personal property. This includes, for example, energy used:

(a) to operate machinery or equipment;

(b) to create conditions necessary for the manufacture of tangible personal property;

(c) to perform an actual part of the manufacture of tangible personal property;

(d) in administrative or other ancillary activities that are located and performed at the manufacturing plant;

(e) in related operations that convey, transport, handle, or store raw materials or finished goods at the manufacturing plant; and

(f) for heating, cooling, ventilation, illumination, fire safety or prevention, or personal comfort and convenience of the manufacturer's employees at the manufacturing plant.

(6) Examples.

(a) A manufacturer uses fuel gases to perform repairs for unrelated parties at a Georgia manufacturing plant. The fuel gases are not exempt because they are not used in the manufacture of tangible personal property and, therefore, do not meet the definition of “energy.”

(b) A manufacturer uses fuel gases to perform repairs to its own machinery and equipment at a Georgia manufacturing plant. The fuel gases are exempt to the extent provided in this Rule because they are used in the manufacture of tangible personal property.

(7) Certificates of Exemption.

(a) Any person making a sale of energy that is necessary and integral to the manufacture of tangible personal property must collect sales and use tax unless the purchaser furnishes the supplier with a properly completed Certificate of Exemption or a direct pay permit.

(b) Where a Certificate of Exemption or direct pay permit has not been previously obtained and submitted and tax is remitted on the sale of exempt energy, the purchaser may apply to the Commissioner for a refund of such tax.

(8) Transaction date. For purposes of this Rule, a transaction occurs on the date of purchase or, in the case of energy billed on a monthly basis, on the billing date.

Authority: O.C.G.A. §§ 48-2-12, 48-8-3.2, 48-8-241, 48-8-269.