

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #00-46**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Application of the industrial machinery exemption from sales and use tax to certain items provided to and installed for a water treatment facility.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

[TAXPAYER] is currently engaged in the construction of improvements to an existing water treatment facility for [CITY], Tennessee, which is located in [COUNTY]. The purpose of the facility is to process raw water into potable water for sale to and use by the community. The facility qualifies as a manufacturing location for purposes of applying the industrial machinery exemption, and the taxpayer has applied for and received

authorization from the Department of Revenue to purchase qualified industrial machinery for installation at the facility.<sup>1</sup>

The question presented in the ruling request is limited to which items purchased by the taxpayer, and listed below, will qualify as exempt industrial machinery. The taxpayer has provided plan sheets that depict the position of each item in the water treatment facility. Also, the taxpayer has provided a description of the use of each item.

<b>Description</b>	<b>Use</b>
Raw water meter pit, chemical injection pit, raw water in-line mixer pit	These pits provide for chemical injection, monitoring the raw water influent, and the mixing of the chemicals.
High service pumps	The pumps transport water between the sedimentation process and the introduction into the pressure filters.
Ready mix concrete, additives, and waterstop used for the construction of chemical contact basin and sedimentation basin	This material is used to construct the basin for the chemical treatment and the sedimentation process necessary to treat the raw water.
Reinforcing steel for construction of chemical contact basin and sedimentation basin	This material is used to construct the basin for the chemical treatment and the sedimentation process necessary to treat raw water.
Aerator equipment	This equipment oxidizes iron in raw water.
Horizontal pressure filters	These filters remove solids and iron and soften water.
Sludge collection equipment	This equipment collects and removes sludge that accumulates in the settling basin.
Miscellaneous water treatment equipment consisting of flow meters, chlorine analyzer, effluent troughs, sludge drain pump station, process control panel, air release valves, injection points, level controllers, tank access hatches, in-line static mixer	These are miscellaneous items required in an aeration-sedimentation-filtration process plant.

<sup>1</sup> A copy of the application and authorization has been provided with the ruling request.

Process and yard piping system	This equipment is the piping required for the conveyance of water from one treatment process to another.
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The taxpayer states that all of the above materials and equipment come in contact with the water being treated, or the equipment is used for control of the process (such as the main control panel).

### QUESTION

Which of the items listed above, as described by the taxpayer, qualify for the industrial machinery exemption set out in T.C.A. §§67-6-102(13) and 67-6-206(a)?

### RULINGS

1. The following items qualify for the industrial machinery exemption under the facts presented:
  - a) High service pumps
  - b) Aerator equipment
  - c) Horizontal pressure filters
  - d) Miscellaneous water treatment equipment consisting of flow meters, chlorine analyzer, effluent troughs, sludge drain pump station, process control panel, air release valves, injection points, level controllers, tank access hatches, in-line static mixer
  - e) Process and yard piping system
  - f) Sludge collection equipment
  - g) Raw water meter pit, chemical injection pit, and raw water in-line mixer pit
  
2. The following items do not qualify for the industrial machinery exemption under the facts presented:
  - a) Ready mix concrete, additives, and waterstop used for the construction of chemical contact basin and sedimentation basin
  - b) Reinforcing steel for construction of chemical contact basin and sedimentation basin

### ANALYSIS

The Retailers' Sales Tax Act, T.C.A. § 67-6-101, et seq., imposes sales and use tax on all sales of tangible personal property to a consumer or any person for any purpose other than for resale, unless an exemption applies.

T.C.A. § 67-6-206(a) exempts industrial machinery from sales and use tax. "Industrial machinery" is defined in pertinent part as follows:

Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, which is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises, or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business....

T.C.A. § 67-6-102(13)(A).

Under the facts presented, the taxpayer is a contractor who is making improvements to a water treatment facility for the [City], Tennessee. The purpose of the facility is to treat raw water for sale to the community. The facts provide that the facility qualifies as a manufacturing location for purposes of applying the industrial machinery exemption, and the taxpayer has applied for and received authorization from the Department of Revenue to purchase qualified industrial machinery for installation at the facility.

The question, then, becomes which items installed by the taxpayer qualify as industrial machinery under the language set out above. Included in the definition of industrial machinery are machinery, apparatus and equipment with all associated parts, appurtenances and accessories, that are necessary to and primarily for processing the water for sale.

In determining whether an item is “necessary to” the fabrication or processing of the product, the Department looks at whether the item in question is necessary to the production process as engaged in by the taxpayer. In doing so, the Department looks at the entire manufacturing operation as it is commonly understood, including all items that make up an integrated system of production. The requirement that the machinery be used “primarily” for the fabrication or processing of the product looks at whether the item in question is used at least fifty-one percent of the time for that purpose.

Applying these provisions to the items described by the taxpayer and shown in the accompanying plan sheets, the high service pumps, aerator equipment, horizontal pressure filters, sludge collection equipment, miscellaneous water treatment equipment,<sup>2</sup> process and yard piping system, and the raw water meter pit, chemical injection pit, and raw water in-line mixer pit all constitute machinery, apparatus or equipment that is necessary to and primarily for processing the water. These items, therefore, qualify as industrial machinery under T.C.A. § 67-6-102(13)(A).

That leaves only the ready mix concrete, additives, waterstop, and reinforcing steel used for the construction of the chemical contact basin and the sedimentation basin. Based on the information provided, the chemical contact basin and the sedimentation basin are not

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<sup>2</sup> This equipment consists of the following: flow meters, chlorine analyzer, effluent troughs, sludge drain pump station, process control panel, air release valves, injection points, level controllers, tank access hatches, in-line static mixer.

machinery, apparatus or equipment. Instead, the basins are composed of a concrete floor and walls and make up part of a building.

In *Tibbals Flooring Company v. Huddleston*, 891 S.W.2d 196 (Tenn. 1994), the Tennessee Supreme Court held that a dry kiln, composed of a concrete floor, metal walls and a roof and used to dry lumber, was not industrial machinery. The court found that the dry kiln was a structure, and also described it as a building. *Id.* at 199. As such, the court held that the kiln did not constitute machinery, apparatus or equipment. *Id.*

The basins at issue here are analogous to the dry kiln in the *Tibbals* case. While the concrete floor and walls of the basin do not comprise a complete building by themselves, they make up the foundation of a building. As shown in the plan sheets provided with the ruling request, the walls of the basin extend above ground level and support the walls, and ultimately the roof, of the remainder of the building. Accordingly, they are not considered machinery, apparatus or equipment and do not qualify as industrial machinery.

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APPROVED: Ruth E. Johnson  
Commissioner

DATE: 11/17/00