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**GENERAL PROVISIONS****§ 32.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Blasting*—The use of a combustible or explosive composition in the removal of material resources, minerals and mineral aggregates from the earth, including the separation of the dirt, waste and refuse in which they are found.

*Charitable organization*—

- (i) An organization whose primary activities meet the following criteria. The organization:

(A) Advances a charitable purpose. An organization advances a charitable purpose if it makes gifts of services or property for general public use which are designed to benefit an indefinite number of persons from an educational, religious, moral, physical or social standpoint.

(B) Donates or renders gratuitously a substantial portion of its services. A substantial portion of the organization's services shall be provided without charge to the subjects of the charity or to persons or entities that are directly providing the service on its behalf. The Department will determine whether the portion donated or rendered is substantial on an organization by organization basis. The word "substantial" does not imply a magical number.

(I) In calculating the gratuitous rendering of a substantial portion of services, an organization may include services to the same person, some of which are given without charge and some for which a charge is made. To qualify under this criteria, an organization may charge for some of its services but must render a substantial portion of its services without charge. This provision is not meant to exclude an organization that would otherwise meet this criteria if it charges some recipients on a sliding scale or graduated fee basis.

(II) To determine if an organization meets this criteria, the Department will examine the remuneration paid to its director and staff, the organization's budget and the percentage of income used to provide charitable services in addition to other factors. In examining these factors, the Department will consider the type of charitable services provided, the location of the organization, the length of time the organization has been in operation and the cost of providing its charitable services.

(C) Benefits a substantial and indefinite class of persons who are legitimate subjects of charity. An organization's gratuitous activity shall be "purely public," in that the public must be the beneficiary of the gift conferred by the organization. The scope of the recipients can be limited to a particular group of the public, so long as the group is a legitimate subject of charity. Legitimate subjects of charity are those that are unable to provide for themselves what the organization provides. Examples include the handicapped, the aged, the sick, children and the poor.

(D) Relieves the government of some of its burden.

(E) Operates entirely free from private profit motive. An organization is not deemed to have a private profit motive merely because it hires employees and pays them reasonable compensation, or otherwise purchases at market rates other services that are required to carry out the charitable activity. The fact that an organization's charitable activities generate surplus funds will be deemed by the Department to constitute evidence of a private profit motive, unless the surplus funds are reinvested to aid legiti-

mate subjects of charity. Surplus funds reapplied to the maintenance and operation of a facility or to retire outstanding debt is not evidence of a private profit motive. Examples of operating entirely free from a private profit motive and not operating free from a private profit motive are as follows:

(I) A nursing home receives Medicaid reimbursements for a substantial number of its residents. The nursing home has a commitment to serve all applicants without regard to their financial means. The nursing home accepts the government reimbursement as full payment for its services. This government reimbursement does not cover the patient costs. The nursing home makes up the difference. This nursing home operates entirely free of a private profit motive.

(II) A corporation produces publications concerning the biological sciences and gives free seminars designed to educate the public. However, it also requires its clients to pay a fee for services rendered and charges clients for computer searches of its library. This organization does not operate entirely free of a private profit motive.

(ii) The term includes trust forms of community chests, funds or foundations and private charitable foundations which hold funds from contributions, such as grants, endowments, gifts and gratuitous donations and which then distribute substantially all of the funds to exempt organizations that qualify as purely public charities and that will use the funds for charitable purposes.

(iii) The term does not include an organization if any part of its funds may inure to the benefit of private shareholders or individuals other than for the payment of reasonable compensation for actual services rendered by the organization's employees.

(iv) An organization's primary purpose cannot involve the promoting or sponsoring of a noncharitable fund raising event such as an athletic or other special event. However, a charitable organization will not lose its status merely because it hires a promoter to run an event to raise funds to support the organization's charitable purpose. Examples of noncharitable fundraising events and charitable fundraising events are as follows:

(A) An organization which exists for the primary purpose of sponsoring athletic events hires a promoter to run a professional golf tournament. The money raised by the event is used to pay the promoter for his services or to pay the event participants with any remaining funds distributed to exempt organizations. This is a noncharitable fundraising event.

(B) A hospital which qualifies as a charitable organization conducts a carnival as a fundraising event. Money raised, other than reasonable payment to the employees or a promoter running the event, is used in the hospital's charitable activities. This is an exempt charitable fundraising event.

(v) An organization is not a charitable organization if a substantial part of its activities consists of carrying on propaganda or otherwise attempting to influence legislation. Examples are as follows:

(A) An organization's main activity is directed at influencing public opinion and enacting legislation against the use of animals in scientific experimentation. A substantial portion of the organization's activities involves the dissemination of propaganda which is favorable to its tenets and beliefs or lobbying for legislation which supports the organization's activities and causes. A substantial portion of this organization's activities are considered to be attempting to influence legislation.

(B) An organization in addition to other activities holds an annual legislative breakfast and invites members of the State House and Senate. This event is not considered to involve a substantial portion of the organization's activities and would not disqualify the organization from receiving charitable status.

*Common carrier*—A public utility which is organized to perform, and which does perform, services which are affected with a public interest, and which holds itself out to the general public to carry goods or persons, without discrimination, for compensation. The term does not include an independent contractor who reserves the right to refuse to serve any person at his discretion and the right and power to fix his rates or charges by individual contract with the person with whom he contracts.

*Dairying*—The business of converting raw milk and other raw materials into milk and milk products which meet the requirements imposed by law for sale of the products to the general public, including the bottling or other packaging of the milk and milk products. Dairying does not include the business of producing raw milk and activities associated therewith, such as the breeding, feeding and raising of cattle or other milk-producing animals, the production of feed for the animals, or the collection of raw milk from producers. With regard to the breeding, feeding and raising of milk animals, and the production of food for the animals, see § 32.33 (relating to farming).

*Dairying operation*—Any of the series of production activities, beginning with the first production operation, clarifying and ending with the packaging of the product for the ultimate consumer, including the following activities: the transportation and storage of property between the first and last production operations; the measuring and testing of the dairy product and its ingredients; and the washing, sterilization and inspecting of bottles. The term does not include activities prior to the first production stage, such as collecting, weighing and storing raw milk or pumping raw milk into a clarifier, or activities following the last production stage, such as casing, loading or delivery to the consumer.

*Dairy product*—Packaged milk and milk products which meet the requirements imposed by law for sale to the general public.

*Direct mail advertising literature or materials*—Tangible personal property which is intended to promote business interest, create good will or engage the attention or interest of the prospective purchaser to whom it is distributed through the United States mails. The property includes but is not limited to, printed matter, brochures, price lists, matchbooks, playing cards, calendars, pens and similar materials, including envelopes and address labels used in sending the literature and materials through the mails.

*Exempt organization*—An organization which has a current valid exemption number issued by the Department for a charitable, volunteer firemen's or religious organization or a nonprofit educational institution.

*Exploring*—The examination and investigation of the earth, waste or stock piles, pits or banks by drilling, digging, boring, sinking shafts or driving tunnels.

*Extracting*—The removing of natural resources, minerals and mineral aggregates from the earth, waste and stock piles, pits or banks, including blast furnace slag.

*Farmer*—A person engaged in the business of farming.

*Farming*—The following activities when engaged in as a regular business, are farming:

(i) *Agriculture*. The business of producing food products or other useful or valuable growths or crops by tilling and cultivating the soil, and by breeding, raising and feeding cattle, livestock, bees, poultry or other animals which produce a food product or which are themselves a food product. For example, the commercial raising of mushrooms is farming, but gardening and similar noncommercial activities are not farming. The following are not included within the definition of agriculture:

(A) The breeding or raising of dogs, cats and other pets; game animals, birds or fish. See subparagraph (vi), or other animals which are intended for use in sporting or recreational activities such as, but not limited to, hunting, fishing, show competition and racing.

(B) The operation of stockyards or slaughter houses.

(ii) *Horticulture*. The business of producing vegetables, vegetable plants, fruits and nursery stock, including the operation of commercial vegetable greenhouses and nurseries. Horticulture does not include the business of servicing plants owned by other persons.

(iii) *Floriculture*. The business of producing flowers and decorative or shade trees, plants and shrubs, in the field, nursery or greenhouse, but not including the raising of trees as timber, or lumbering, logging or sawmill operations.

(iv) *Dairy farming*. The business of breeding, feeding and raising of cattle and other milk producing animals, and the production by the owner of the animals of feed for them, but not including operations such as pasteuriz-

ing or homogenizing or the making of butter, cheese and ice cream. Reference should be made to §§ 32.31 and 32.32 (relating to dairying; and manufacturing; processing).

(v) *Fur-ranching*. The propagation and raising of ranch raised fur-bearing animals.

(vi) *Propagation of game birds*. The propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. §§ 101—2965 (relating to Game and Wildlife Code).

(vii) *Propagation of aquatic animals*. The propagation of fish and other aquatic animals for commercial use as a food or food product by holders of propagation permits issued under 30 Pa.C.S. §§ 101—7314 (relating to Fish and Boat Code).

*Farm products*—The final natural products of farming operations. Products are considered to be farm products only while they are on the farm premises, and in an unprocessed state. Products such as butter, sausage, pasteurized milk, flour, canned goods, jellies and juices, are not farm products as defined herein, but may be manufactured products within the meaning of § 32.32.

*Isolated sales*—Sales of taxable property or services which:

(1) Occur no more frequently than three times nor for more than a total of 7 days in any 1-calendar year.

(2) Are not made from a location at which other businesses are making similar sales of the same taxable property or services upon which tax is required to be collected.

*Manufacturing*—The performance as a business of an integrated series of operations which places personal property in a form, composition or character different from that in which it was acquired whether for sale or use by the manufacturer. The change in form, composition or character shall result in a different product having a distinctive name, character and use. Operations such as compounding, fabricating or processing are illustrative of the types of operation which may result in a change although any operation which has that result may be manufacturing. Mere changes in chemical composition or slight changes in physical properties are not sufficient. For example, the C Company, as its business operation, takes coffee beans and thereafter, by mechanical and hand labor cleans them, removes the outer skins and roasts the beans. The roasted coffee, resulting from the C Company's activities, is not a manufactured product, notwithstanding the fact that there has been a change in color, weight and size of bean.

*Manufacturing operations*—Any one of the series of production activities, beginning with the first production operation and ending with the packaging of the product for the ultimate consumer. The term does not include activities prior to the first production stage, such as collecting, weighing and storing raw materials or activities following the last production stage, such as casing, loading or delivery to the consumer.

*Mining*—Commercial mining both deep and strip mining, quarrying, gas and oil drilling, and other commercial removal of natural resources, minerals or mineral aggregates from the earth or from waste or stock piles or from pits or banks including blast furnace slag. Water well drillers shall be considered to be engaged in mining and shall be entitled to the mining exemption.

*Mining operation*—Any of the activities set forth in the definitions of “mining,” “exploring,” “extracting,” “blasting,” and “refining” whether performed solely or collectively with one of the other activities.

*Multiple copies*—Fifty or more copies.

*Nonprofit educational institution*—

(i) A charitable organization, as defined in this section, which is created and which exists by law or by public authority predominantly for the purpose of education without pecuniary profit to an officer, member or shareholder except as reasonable compensation for services actually rendered to the institution. Public schools which are governed by the Public School Code of 1949 (24 P. S. §§ 1-101—27-2702) qualify as political subdivisions rather than nonprofit educational institutions. Reference should be made to § 32.23 (relating to sales to the Commonwealth or its political subdivisions).

(ii) The term does not include groups which merely support or encourage the cause of education in general or a specific educational institution, or disseminate information on safety, or which are concerned with the welfare of persons engaged in educational work, including groups such as PTA, alumni groups, scholastic groups, professional associations and contributor groups even if the groups are sponsored by or affiliated with a nonprofit educational institution, and even if the groups benefit or generally inform the public.

*Photofinisher*—A person who is engaged in producing printed pictures from developed or undeveloped film is a photofinisher.

*Photographer*—A person engaged in the business of performing the total photography operation of picture taking, development of exposed film and the finishing and printing of pictures. The term also includes a person engaged in the business of performing a photography operation using microfilm, videotape, videocassettes or the like.

*Photo-refinisher*—A person engaged in the business of tinting, coloring or altering of finished photographic prints, microfilm, videotape, videocassettes or the like, in any form. A photo-refinisher is to be distinguished from a photographer engaged in the finishing segment of the photography operation on the basis that a photo-refinisher performs an activity which is not in conjunction with the photography operation and which, in fact, occurs subsequent to the completion of the photography operation.

*Printed matter*—The term includes but is not limited to books, booklets, letterheads, billheads, printed envelopes, folders, printed packages and packaging materials, advertising circulars, programs, newspapers, magazines, periodicals and similar items.

*Printer*—A person engaged in the business of printing.

*Printing*—The term includes the following:

(i) The performance of an integrated series of operations engaged in as a business which is predominantly and directly related to the production of multiple copies of substantial similar printed matter upon which a sales or use tax is due or for which an exemption exists. Based upon a 12-month period, property is predominantly used in printing when multiple copies are produced for 50% or more of the time or the total copies of printed matter, divided by the number of orders for substantially similar items, exceeds 50 or more copies.

(ii) When part of an integrated series of operations, the process of organization and arrangement of graphic material into page or other final format, whether by manual operation, computer operation or otherwise. It does not include data processing, word processing, photocopying or automatic typewriters, except where the activities are part of the integrated series of operations. Where equipment is used for both exempt and nonexempt purposes, the predominant use test shall determine its tax status.

*Processing*—The following operations when engaged in as a business enterprise have been defined by the General Assembly as processing:

(i) The cooking or freezing of fruits, vegetables, mushrooms, fish, sea food, meats or poultry, when the person engaged in business packages such property in sealed containers for wholesale distribution.

(ii) The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns of fabrics when the activities are performed prior to the sale to the ultimate consumer.

(iii) The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat-treating of metals or plastics for sale or in the process of manufacturing.

(iv) The rolling, drawing or extruding of ferrous and nonferrous metals.

(v) The fabrication for sale of ornamental or structural metal or of metal stairs, staircases, gratings, fire escapes or railings, not including fabrication work done at the construction site.

(vi) The preparation of animal feed or poultry feed for sale.

(vii) The production, processing and bottling of nonalcoholic beverages for wholesale distribution.

(viii) The operation of a saw mill or planing mill for the production of lumber or lumber products for sale.

(ix) The milling for sale of flour or meal from grains.

(x) The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products, including lard, tallow, grease, cooking and inedible oils for wholesale distribution.

(xi) The processing of used lubricating oils.

(xii) The broadcasting of radio and television programs of licensed commercial or educational stations.

*Public utility*—A person engaged in the performance of public utility service, as that term is defined in this section.

*Public utility service*—The performance of services for compensation for the general public, without discrimination, which is subject to regulation by a governmental agency rather than determined by contract with the person for whom the services are performed; provided that the services so performed shall be affected with a public interest.

*Purchase price*—The total value of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail, without any deductions on account of expenses incurred, such as travel time, rentals of rooms or equipment, salaries or wages paid to assistants or models, and charges for the developing of negatives, even though the expenses are separately itemized in billings to customers.

*Refining*—The collective operation of cleaning, grading, cracking, crushing and similar processing of natural resources, minerals and mineral aggregates after their extraction from the earth, waste or stock piles, pits or banks including blast furnace slag.

*Religious organization for religious purpose*—A group or body of persons which is created and which exists for the predominant purpose of regularly holding or conducting religious activities or religious education, without pecuniary benefit to an officer, member or shareholder except as reasonable compensation for actual services rendered to the organization. It is not sufficient that one of the purposes of an organization is to support or encourage religious activities or education. Mere sponsorship by or affiliation with a church or other religious organization for a religious purpose does not, of itself, render the sponsored or affiliated group a religious organization for a religious purpose. For example, the First Church sponsors a Men's Bible Class and a bowling team. The Bible Class has as its predominant purpose the holding of classes in religious education. It is, therefore, a religious organization for a religious purpose. The bowling team, although sponsored by the church, is not a religious organization for a religious purpose.

*Returnable containers*—Containers which are designed to deliver property more than one time, including containers which require cleaning, repair or refurbishing prior to their subsequent use.

*Volunteer firemen's organization*—A group or body of persons which is created and which exists for the purpose of fighting fires for the protection of the

public without reimbursement or an organization which is formed under the Volunteer Firemen's Relief Association Act (53 P. S. §§ 8501—8508). The organization shall be operated without pecuniary profit to an officer, member or shareholder, except as reasonable compensation for actual services rendered to the organization. The term does not include a fire company's auxiliary or similar group composed of persons who merely support or sponsor the work of a fire company but which, as a group, does not fight fires.

*Wrapping equipment*—Property used in the operation of packaging which collectively includes conveying, inserting, packing, crating, binding, sealing, coding, weighing and addressing of personal property which is delivered to another person.

*Wrapping supplies*—The term includes property, except for returnable containers as defined in this section, which is used as an outside covering or internal packing in order to deliver personal property to a purchaser. The term also includes items such as nonreturnable containers, mailing labels, envelopes and packing slips attached to the covering transferred with the personal property, instruction sheets, warranty cards, material for preservation of the property, paper and plastic plates, cups and similar items. The term does not include napkins, wooden or plastic spoons, forks, straws and similar items and these items are therefore subject to tax when sold to restaurants or other eating places. The sale or use of wrapping supplies, equipment and services for residential use is explained in § 58.1 (relating to publication of list of taxable and exempt tangible personal property).

#### Source

The provisions of this § 32.1 amended April 5, 1985, effective April 6, 1985, 15 Pa.B. 1261; amended June 28, 1985, effective June 29, 1985, 15 Pa.B. 2389; amended June 29, 1990, effective June 30, 1990, 20 Pa.B. 3600; amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1288; amended March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322; amended December 23, 1994, effective December 24, 1994, 24 Pa.B. 6437. Immediately preceding text appears at serial pages (184049) to (184050), (179253), (149561) to (149564), (179255) to (179256) and (190177).

#### Notes of Decisions

##### *Charitable Organization*

The Court of Common Pleas committed an error of law when it concluded that corporations formed to promote golf tournaments and conduct charitable activities met the burden of proving that they were institutions of purely public charity simply because they provided funds to organizations that were tax exempt under federal law, where the corporations employed another corporation, which specializes in managing golf tournaments, to promote its 1996 and 1997 golf events, and where the record establishes that the overwhelming majority of revenue generated, after operating expenses, went to fund the purse for the participants of the golf tournament. *Betsy King LPGA Classic, Inc. v. Richmond Township*, 739 A.2d 612 (Pa. Cmwlth. 1999).

The trial court properly determined that the drug and alcohol treatment facility advances a charitable purpose, where the nature of the facility's activity is that of helping to restore lives broken by addiction to alcohol or other drugs, and this is clearly a gift of services or property for general public

use which are designed to benefit an indefinite number of person from a physical and social standpoint, and where the facility rendered services at below cost in many instances, particularly to in-patients of State agencies such as the Department of Corrections. *Gateway Rehabilitation Center, Inc. v. Board of Commissioners of the County of Beaver*, 710 A.2d 1239 (Pa. Cmwlth. 1998).

The record supported the trial court's determination that the drug and alcohol treatment facility provides a substantial portion of its services gratuitously, where the facility receives Medicaid payments for eligible in-patients but that the amount received does not cover the cost of treatment; the facility has operated at a loss since 1990 or 1991; and the facility provides other services free of charge, including evaluations of prospective patients (always free regardless of ability to pay) and education programs for staffs of other facilities that treat alcohol and drug dependent patients. *Gateway Rehabilitation Center, Inc. v. Board of Commissioners of the County of Beaver*, 710 A.2d 1239 (Pa. Cmwlth. 1998).

Although the definition of "charitable organization" was not binding in the instant case, it was generally supportive of court's conclusion that historical society, while performing good works, did not serve a purely public and charitable purpose and thus was not entitled to tax exempt status. *In re Salem Crossroads Historical Restoration Society, Inc.*, 526 A.2d 1257 (Pa. Cmwlth. 1987).

Nonprofit corporation providing statistical analysis services to hospitals and other health care providers was not entitled to tax exempt status as a "purely public charity" required by Article VIII, Section 2 (a)(v) of the Pennsylvania Constitution of 1968 nor as a "charitable organization" defined in this section. Since its computer services could not be deemed a gift for general public use, it did not donate any of its services, all clients had to pay fees to cover costs, its beneficiaries were limited in number and were not legitimate objects of charity, and it failed to demonstrate operation completely free of profit motive. *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa. Super. 1985).

The fact that an organization is involved in activities which attempt to educate or motivate the general populace toward community improvement and is devoid of private gain does not characterize such an organization as a "purely public charity" in the legal sense. *Commonwealth v. The American Anti-Vivisection Society*, 377 A.2d 1378 (Pa. Cmwlth. 1977).

#### *Manufacturing*

A laboratory's analysis, research and testing of client-provided products did not constitute a transformation of property or otherwise satisfy the definition of "manufacturing" as would entitle it to an exclusion from use tax. *Lancaster Laboratories, Inc. v. Commonwealth*, 611 A.2d 815 (Pa. Cmwlth. 1992).

Freezing of water into ice constitutes only superficial change and cannot be considered to come within the "manufacturing exclusion" from use taxation, 72 P. S. § 7201(o)(4); *Commonwealth v. Air Products and Chemicals, Inc.*, 475 Pa. 318, 380 A.2d 741 (1977) (customer stations transforming liquid to gas are used in manufacturing) distinguished. *Marweg v. Commonwealth*, 513 A.2d 525 (Pa. Cmwlth. 1986).

#### *Nonprofit Educational Institution*

Since the nonprofit corporation's seminars and group study programs existed primarily for the benefit of individuals with an occupational interest in the accounting profession, it was not entitled to a sales tax refund as a nonprofit educational institution although its programs were open to the public. *PICPA Foundation for Education and Research v. Commonwealth*, 598 A.2d 1078 (Pa. Cmwlth. 1991).

#### *Public Utility; Conflict with Statute*

Taxpayer, a provider of cellular telecommunications, asserted it was entitled to exclusion from sales and use tax on the grounds that it was a public utility as defined in the Department of Revenue's regulations; however, where the definition contained in the statute under which the regulation was

promulgated provides otherwise, the statute controls. *Bell Atlantic Mobile Systems, Inc. v. Commonwealth*, 799 A.2d 902 (Pa. Cmwlth. 2002).

#### Cross References

This section cited in 61 Pa. Code § 60.9 (relating to premium cable services); 61 Pa. Code § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions); 61 Pa. Code § 32.33 (relating to farming); 61 Pa. Code § 38.1 (relating to imposition and computation of tax); 61 Pa. Code § 60.7 (relating to sale and preparation of food and beverages); 61 Pa. Code § 60.8 (relating to secretarial and editing services); 61 Pa. Code § 60.17 (relating to sale of food and beverages by nonprofit associations which support sports programs); and 61 Pa. Code § 60.20 (relating to telecommunications service).

### § 32.2. Exemption certificates.

(a) *When exemption certificates are required.* A person who is required by the act to collect tax upon sales or rentals of tangible personal property or taxable service shall, in every case in which he has not collected tax, have available for Departmental inspection a valid, properly executed exemption certificate which was accepted in good faith or, in lieu of the certificate, the following:

- (1) Evidence that the property sold or rented is not tangible personal property or a taxable service as defined by the act.
- (2) Documentary evidence that his customer is the United States or an instrumentality thereof, the Commonwealth, or a political subdivision or instrumentality of the Commonwealth.
- (3) Documentary evidence that he was required to deliver the property sold, rented or serviced to a destination outside this Commonwealth for use outside this Commonwealth, and that he did, in fact, so deliver the property.

(b) *Relief from tax liability.* A seller or lessor who accepts in good faith an exemption certificate which discloses a proper basis for exemption upon its face is relieved of liability for collection or payment of tax upon transactions covered by the certificate.

(1) *Disclosure of proper exemption basis.* For a certificate to disclose a proper basis for exemption, it shall meet the following requirements:

- (i) The certificate must be an officially promulgated exemption certificate form, or a substantial and proper reproduction thereof.
- (ii) The certificate shall be dated and executed in accordance with the instructions published for use therewith, and must be complete and regular in every respect.
- (iii) The certificate shall state a proper exemption reason.

(2) *Acceptance in good faith.* An exemption certificate to be accepted in good faith shall also meet the following requirements:

- (i) The certificate shall contain no statement or entry which the seller or lessor knows, or has reason to know, is false or misleading. A certificate accepted by a seller or lessor, in the ordinary course of his business, which on its face discloses a valid basis of exemption consistent with the activity

of the purchaser and character of the property or service being purchased, shall be presumed to be taken in good faith.

(ii) A seller or lessor is presumed to be familiar with the law and regulations regarding the property in which he deals. When a seller or lessor has accepted a blanket exemption certificate, each transaction between the parties is considered a separate claim for exemption thereunder, and the seller or lessor shall, therefore, exercise good faith in each transaction, in order to avoid liability for the tax.

(iii) The certificate shall be in the physical possession of the seller or lessor, and available for Departmental inspection, on or before the 60th day following the date of the sale or lease to which the certificate relates. When a certificate is not made available for Departmental inspection on or before that time, the seller or lessor shall prove to the satisfaction of the Department, by means of evidence other than an exemption certificate, that the sale or lease in question is, in fact, exempt. In the absence of proof the transaction will be deemed taxable and assessed as such.

(c) *Penalties for misuse of exemption certificates.* False or fraudulent statements made upon an exemption certificate by a person, whether a seller, lessor, buyer, lessee or a representative or agent of the persons, is a misdemeanor, upon each separate conviction of which the offender may be sentenced to imprisonment not exceeding 1 year, a fine not exceeding \$1,000, or both, together with costs of prosecution. In addition, severe civil penalties are provided by law for misuse of exemption certificates by any person. Reference should be made to section 268(b) of the TRC (72 P. S. § 7268(b)).

(d) *Forms of certificates.* The following exemption certificate forms and instructions have been promulgated by the Department:

(1) *Forms for general use.* The Department form entitled Sales and Use Tax Exemption Certificate may be used for:

(i) *Unit exemption.* This exemption shall be used for all single sales or leases of tangible personal property.

(ii) *Blanket exemption.* This exemption shall be used for claims of exemption upon sales and leases of tangible personal property in a series of transactions between parties.

(2) *Forms for purchase of motor vehicles.* The following form is designed for purchase of motor vehicles, and is not valid for purposes other than that for which it is designed: *Form REV-191 Vehicles Sales and Use Tax Return.* This form shall be used for claims of exemption upon the purchase or lease of a motor vehicle, trailer, semitrailer or tractor which is required by law to be registered with the Bureau of Motor Vehicles, and shall accompany the application for title.

**Authority**

The provisions of this § 32.2 issued under section 6 of The Fiscal Code (72 P. S. § 6).

**Source**

The provisions of this § 32.2 amended November 5, 1982, effective November 6, 1982, 12 Pa.B. 3905; corrected December 19, 2003, effective January 4, 2003, 33 Pa.B. 6222. Immediately preceding text appears at serial pages (293450), (267691) and (215825).

**Notes of Decisions**

The Sheraton Hotel was required to obtain documented proof of an occupant's entitlement to the hotel occupancy tax exemption in order to obtain the exemption. *Egner v. Commonwealth*, 557 A.2d 1157 (Pa. Cmwlth. 1989).

**Cross References**

This section cited in 61 Pa. Code § 32.22 (relating to sales to the United States Government or within areas subject to the jurisdiction of the Federal Government); 61 Pa. Code § 32.25 (relating to steam, gas, electricity, fuel oil and kerosene); 61 Pa. Code § 33.3 (relating to cancellations, returns, allowances and exchanges); and 61 Pa. Code § 34.4 (relating to direct payment permit).

**§ 32.3. Sales for resale.**

(a) *Sales for resale exempt.* A transfer for a consideration of the ownership, custody or possession of tangible personal property or the rendition of taxable services for the purpose of resale is exempt from tax. Transfer for the purpose of resale shall include the following:

(1) The transfer of tangible personal property or rendition of taxable services on, or purchase of, repair parts for property which is:

(i) To be sold, rented or leased in the regular course of business. However, the sale of malt or brewed beverages or liquor to a person who is a retail dispenser or a holder of a retail liquor license under The Liquor Code (47 P. S. §§ 1-101—9-902), does not qualify for the resale exemption.

(ii) To be physically incorporated as ingredient or constituent into other personal property which is to be sold in the regular course of business or transported in interstate commerce to a destination outside of this Commonwealth.

(2) Personal property purchased or having a situs within this Commonwealth solely for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into personal property and thereafter transported outside of this Commonwealth for use exclusively outside the Commonwealth.

(b) *Presumption of taxability.* Every sale of tangible personal property is presumed to be at retail and therefore subject to tax. A purchaser claiming the resale exemption shall therefore establish that the specific property purchased is to be resold. A purchaser who uses or consumes property purchased for resale or who disposes of property purchased for resale in a manner other than by resale becomes the ultimate consumer or user of the property and shall pay a use tax with respect to the taxable use.

(c) *Use by vendor of property in the conduct of business subject to tax.* A vendor who consumes or otherwise uses tangible personal property in the conduct of the vendor's business is the ultimate consumer or user of the property, and sales made to him for the consumption or use is subject to tax. For example, the tax is applicable to the sale of display cases and similar merchandising equipment to hotels, food markets, stores and similar persons using the property in the conduct of their business. Similarly, the sale of a carbonator to a soda fountain operator for making soda or carbonated water is subject to tax. The sale of carbon dioxide to a soda fountain operator is considered a sale for resale and is not considered taxable.

(d) *Withdrawal from stock for vendor's own use subject to tax.* The withdrawal by a vendor for personal use of goods in stock held for resale is a taxable use and is subject to tax.

#### Cross References

This section cited in 61 Pa. Code § 32.4 (relating to isolated sales); and 61 Pa. Code § 47.1 (relating to coin-operated amusement devices).

### § 32.4. Isolated sales.

(a) *Isolated sales.* Subject to subsection (b) the following transactions are considered to be isolated sales:

(1) Infrequent sales of a nonrecurring nature made by a person not engaged in the business of selling tangible personal property, such as the following:

(i) The sale of a used vacuum cleaner by a housewife.

(ii) Isolated sales by executors, administrators, trustees and other fiduciaries in the liquidation of an estate.

(iii) Sales or execution sales under a court order or by a court officer.

(2) Infrequent sales of a nonrecurring nature of tangible personal property acquired for use or consumption by the seller, and not sold in the regular course of the business of the person, such as:



(i) The sale of a typewriter by an insurance company which does not regularly dispose of such equipment.

(ii) The sale of used machinery, fixtures, equipment and similar items by a person engaged in a business or occupation such as manufacturing or operating a retail store, when the person does not sell the items in the regular course of its business.

(iii) The sale of an entire business by the owner thereof except that the value of a motor vehicle, trailer, semitrailer, motor boat or similar property constituting part of the sale may not be exempt. The transfer of inventory or stock in trade constituting part of the sale may not be exempt as an isolated sale but may be exempt as a sale for resale. Reference should be made to § 32.3 (relating to sales for resale).

(b) *Transactions which are not isolated sales.* The following are examples of transactions which shall not be considered isolated sales:

(1) The sale of property held primarily for sale to customers in the ordinary course of a trade or business.

(2) The sale of stock in trade or other property of a kind which would properly be included by a manufacturer, wholesaler, retailer, jobber or other vendor in inventory even though the sales are infrequent and only comprise an insignificant fraction of the vendor's total business.

(3) Sales which constitute an integral part of a business even though the sale of the tangible personal property is not the primary business of the seller, as the sale of repossessed property by a finance company.

(4) The sale of by-products, waste and scrap by a person engaged in a business, when the sales are regularly made to dispose of these items.

(5) The sale of food for on-premises consumption by a company operating a cafeteria for employees. The sale of meals may not be considered isolated merely because the activity is not the principal business of the seller.

(6) The sale of a property by a charitable, volunteer firemen's or religious organization or nonprofit educational institution as a fund raising activity, if the following is applicable:

(i) The sales or series of sales is conducted more than three times or more than a total of 7 days in any year.

(ii) The organization or institution is making sales of taxable property other than food or beverages sold at or from a school or church, on the same premises in competition with other vendors required to collect tax.

(7) The sale of motor vehicles, trailers, semi-trailers, motor boats, aircraft, snowmobiles or other similar tangible personal property required under Federal law or the laws of the Commonwealth to be registered or licensed.

(8) The sale of a tangible personal property on the same premises in competition with vendors required to collect tax, even though the sale may otherwise qualify as an isolated sale.

(c) *Sales involving auctioneers.* Sales involving auctioneers shall be exempt from tax as isolated sales if they qualify as exempt sales under the provisions of § 31.23 (relating to auctioneers).

**Source**

The provisions of this § 32.4 amended through December 20, 1975, 5 Pa.B. 3277.

**Cross References**

This section cited in 61 Pa. Code § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions).

**§ 32.5. Multi-state sales.**

(a) *Transactions where delivery is made to locations within this Commonwealth.* Where delivery of taxable property or services is made to locations within this Commonwealth, the transactions shall be subject to tax. Delivery in this Commonwealth to a nonresident purchaser does not make the transaction exempt.

(b) *Transactions where delivery is made to locations outside this Commonwealth.* When tangible personal property is sold, leased or serviced within this Commonwealth and the vendor, lessor or serviceperson is obligated to deliver it to a point outside of this Commonwealth, or to deliver it to a carrier or to the mails for transportation to a point outside this Commonwealth, sales tax does not apply. However, where tangible personal property under a sale, lease or service is delivered in this Commonwealth to the buyer or lessee or their agent, other than an interstate carrier, the tax applies, notwithstanding that the buyer or lessee may subsequently transport the property out of this Commonwealth.

*Examples:*

Henrietta Higgins, a speech pathologist, purchased disposable laboratory supplies from a Commonwealth retailer. The retailer delivers the supplies (cost and freight) to Providence, Rhode Island. Title to the supplies passed to Higgins at the Commonwealth point of shipment, but sales tax does not apply because delivery is made out-of-State.

Ahab Inc., a maker of specialized steel in this Commonwealth, supplies harpoons to Neptune Inc., a Massachusetts fishing concern. The harpoons are delivered to Neptune Inc.'s agent (freight on board) Harrisburg, Pennsylvania for ultimate delivery in Massachusetts. Sales tax applies to this transaction because delivery is made and title passes in this Commonwealth.

(c) *When vendor, lessor or serviceperson shall collect tax.* A vendor, lessor or serviceperson engaged in business activity within this Commonwealth shall collect the tax imposed by the act with respect to the following transactions:

(1) Where property is shipped from a point outside this Commonwealth to a point within this Commonwealth.

(2) Where property is shipped from a point within this Commonwealth to another point within this Commonwealth by a route a portion of which is outside this Commonwealth.

(3) Where property is purchased and delivered within this Commonwealth even though the purchaser subsequently transports the property to a location outside this Commonwealth with the following exceptions:

(i) Property purchased or having a situs within this Commonwealth solely for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into personal property and thereafter transported outside this Commonwealth for use exclusively outside this Commonwealth shall be deemed to be a resale and therefore is not subject to tax.

(ii) The sale at retail or use of motor vehicles, trailers or semitrailers, or bodies attached to the chassis thereof sold to a nonresident of this Commonwealth to be used outside this Commonwealth which are registered in a state other than this Commonwealth within 20 days after delivery to the vendee is not subject to tax.

(d) *Maintenance of records.* A vendor, lessor or serviceperson making sales of tangible personal property exempt from the tax set forth in this section shall maintain records of the transactions, together with documents evidencing the delivery of the tangible personal property to a destination outside this Commonwealth. The documents include waybills, bills of lading, insurance or registry receipt issued by the United States Post Office, mail orders, shipping orders or other data pertinent to the purchase and delivery.

(e) *Property is not exempt by reason of being used in interstate and foreign commerce.* Unless property is otherwise exempt by reason of this section or this chapter, the sale or use of tangible personal property in this Commonwealth shall be subject to the tax notwithstanding the fact that the purchaser is engaged in interstate or foreign commerce or that the property may be intended for use in interstate or foreign commerce.

(f) *Interim storage of property to be used exclusively outside this Commonwealth.* Effective March 4, 1971, the interim storage in this Commonwealth of property purchased outside this Commonwealth for use outside this Commonwealth and upon which no work or services are performed is a taxable use. The use tax shall be based upon the original purchase price of the property. The storage charges are exempt from tax.

#### **Authority**

The provisions of this § 32.5 issued under section 270 of the Tax Reform Code (72 P. S. § 7270).

#### **Source**

The provisions of this § 32.5 amended November 8, 1985, effective November 9, 1985, 15 Pa.B. 4038. Immediately preceding text appears at serial pages (40262) to (40264).

**§ 32.6. Wrapping supplies, equipment and services.**(a) *Wrapping supplies.*

(1) The purchase or use of wrapping supplies by a person engaged in the business of selling personal property is entitled to an exemption from tax upon the person's purchase or use of wrapping supplies when the use is incidental to the delivery of property which he sells.

(2) The sale or use of returnable containers is taxable unless the purchaser is engaged in the business of manufacturing, processing, dairying or farming and the returnable container is used in the delivery of the product to the ultimate consumer.

(b) *Wrapping equipment.* The purchase or use of wrapping equipment is subject to tax, unless the following apply:

(1) The wrapping equipment is used by a person engaged in the business of manufacturing, processing, farming or dairying.

(2) The wrapping supplies pass to the ultimate consumer along with the exempt user's product.

(c) *Services.* If a vendor makes a charge for wrapping property, whether the vendor has sold the property wrapped or not, the vendor shall be deemed to have made a sale of the wrapping services which the purchaser receives. The vendor shall collect tax upon the purchase price of the wrapping services without deduction for labor, service or handling charges. If a vendor is required to collect tax under this subsection on charges made for the service of wrapping property, the vendor is entitled to a resale exemption on the purchase of wrapping supplies.

**Authority**

The provisions of this § 32.6 amended under section 270 of the Tax Reform Code (72 P.S. § 7270).

**Source**

The provisions of this § 32.6 amended March 29, 1991, effective March 30, 1991, 21 Pa.B. 1288. Immediately preceding text appears at serial pages (149574) to (149575).

**Cross References**

This section cited in 61 Pa. Code § 41.3 (relating to dry ice for packaging ice cream); 61 Pa. Code § 52.1 (relating to purchases of medicines, medical supplies, medical equipment and prosthetic or therapeutic devices); and 61 Pa. Code § 57.5 (relating to sale of equipment to restaurants).

**NONBUSINESS EXEMPTIONS****§ 32.21. Charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions.**

(a) *Purchases for use by exempt organizations.* The exemption to which an exempt organization shall be entitled is limited and does not extend to all purchases by the exempt organization. The Department may issue an assessment

against an exempt organization for sales and use tax owed on nonexempt purchases, whether or not an exemption certificate or declaration of sales tax exemption was tendered to the vendor. Moreover, the exemption is personal and is not transferable to another. Individuals making purchases of tangible personal property on behalf of the exempt organization are not entitled to claim the organization's exempt status.

(1) *Payments.* The purchases referred to in subsection (a) shall be billed to, and paid for by, the exempt organization.

(2) *Taxable and exempt purchases.* The exemption applies to the purchase and use of tangible personal property or services billed directly to the exempt organization, including office supplies, motor vehicles, food and beverages, fund raising supplies, utilities and furniture with the exception of the following:

(i) *Unrelated trade or business.* Tangible personal property used in the performance of an unrelated trade or business. Examples of taxable purchases are the following:

(A) The purchase of kitchen equipment by a hospital in operating a cafeteria for use by the general public.

(B) The purchase of tables, chairs and a refrigerator by a volunteer fire company in operating a bar or restaurant.

(C) The purchase of liquor or malt beer by an exempt organization which is licensed by the Liquor Control Board.

(ii) *Materials and supplies.* Materials, supplies and equipment used and installed in the construction, reconstruction, remodeling, repair and maintenance of real estate so as to become a permanent part thereof. However, materials and supplies used for routine maintenance and repair of real estate are exempt from tax. "Routine maintenance and repair" means minor repairs and regular maintenance performed to restore or preserve real estate or to prevent deterioration resulting from ordinary wear and tear.

(A) Examples of taxable purchases are the following:

(I) A church's purchase of a furnace which will be installed by its membership.

(II) A volunteer fire company's purchase of building blocks which will be used by the organization to construct a new firehouse.

(III) A hospital's purchase of five light fixtures to replace the existing fixtures in the administrative offices.

(IV) A private school's purchase of wall-to-wall carpeting which the school will have installed by someone other than the seller.

(B) Examples of materials and supplies qualifying as routine maintenance and repair are the following:

Paint, paint brushes

Light bulbs

Floor wax

Carpet shampoos  
 Replacement window panes  
 Cement to repoint bricks  
 Patch asphalt  
 Roofing tar  
 Expendable mops, brushes

(C) Tools and equipment for routine maintenance and repair are taxable.

(iii) *Equipment.* Equipment used but not installed in the construction, reconstruction, remodeling, repair and maintenance of real estate. Examples of taxable purchases are the following:

- (A) A school's purchase or repair to a lawn mower or snowblower.
- (B) A church's purchase of a hammer and saw.
- (C) A hospital's purchase or repair of a floor polisher.

(iv) *Hotel and motel occupancies.* Charges for occupancy of a hotel, motel or similar establishment. Example: Church "A" is billed \$100 for 2 days use of a conference room at Motel "X." Church "A" would be required to pay Hotel Occupancy Tax upon the \$100.

(v) *Purchases on behalf of others.* Purchases by an exempt organization acting as a collection agent for its membership. An example of a taxable purchase is as follows:

College "B" engages the services of Photographer "Y" to photograph the individual members of the senior class. Photographer "Y" bills College "B" which, in turn, bills each senior. College "B" shall be required to pay tax to Photographer "Y" unless College "B" itself is licensed with the Department for the collection and remission of sales tax upon its billing to each senior.

(b) *Procedures for claiming exemption.* Use of the exemption shall conform with the following:

(1) *Identity of purchaser or user.* The person claiming the exemption shall be an authorized agent or representative of the exempt organization which is entitled to the exemption, and shall make the purchase in the name of and from funds of the exempt organization. The purchase of property by an individual upon his own account shall be subject to tax, even though the purchaser intends to later donate the property purchased to an exempt organization which would have been entitled to exemption if it purchased the property directly. For example, the purchase of flowers by and in the name of a church, to decorate the altar, shall be exempt from tax. However, the purchase of flowers by a church member on his own account shall be taxable, even though the purchaser intends to donate the flowers to the church.

(2) *Exemption numbers.* An organization desiring to qualify as an exempt organization shall file with the Department a completed Application for Sales Tax Exempt Status form, together with related documentation and other information required by the Department. The Department will not consider the

application unless the organization is actively performing the activities upon which it bases its claim for exemption. The Department will review the application and documents, and if in its opinion the activities of the organization qualify it as an exempt organization, will issue an exemption number, prefixed by the number "75," to the organization. The Department may issue an exemption number to the parent organization for use by member organizations. Only organizations which are registered with the Department and hold an exemption number are permitted to make tax free purchases for use by the organization. Once issued, an exemption number continues to be valid and remains in effect until it is revoked by the Department. For the purpose of insuring that the organization is entitled to its exemption and to update the Department's records, the Department may require the organization to reapply for the exemption and submit another application together with other required documentation every 3 years. The Department may require an organization to reapply for this status at any time if the Department has reasonable cause to believe that the organization's activities do not meet the criteria established for exemption including those in § 32.1 (relating to definitions). The Department may revoke an exemption number issued to an organization which does not qualify for exempt status or fails upon request to submit an application, related documentation and other information requested by the Department.

(3) *Appeals.* If the Department denies an Application for Sales Tax Exempt Status or revokes an exemption number, the organization may file an appeal with the Board of Appeals within 90 days of the mailing date of the notice of the action complained of under § 7.4 (relating to filing of special petitions).

(4) *Exemption certificates.* A purchase by an exempt organization shall be supported by a valid, properly executed Sales and Use Tax Exemption Certificate which is to be retained by the vendor. The exemption number, prefixed by the digits 75, together with the following language shall be inserted on the face side of the exemption certificate: "Property and/or services are being purchased for use and not for resale by purchaser holding exemption number 75-." An exempt organization is not permitted to use its exemption number in connection with the purchase of tangible personal property or services, which the organization intends to resell, whether or not its sales are for fund raising purposes.

(5) *Exempt organizations.*

(i) *Exemption not transferable.* The exemption to which an organization is entitled is not transferable to another, such as a construction contractor. For example, College "E" engages the services of Repairman "Z" to supply and replace a broken window pane. While College "E" is entitled to claim an exemption upon the purchase of the window pane, Repairman "Z" is required to pay tax upon his cost of the window pane since he is a contractor.

(ii) *Declaration of sales tax exemption.* To claim an exemption on taxable purchases of \$200 or more, an exempt organization shall furnish to the vendor a Declaration of Sales Tax Exemption. The “Declaration Form” shall contain the organization’s exempt status number and indicate a usage which is nontaxable. The obtaining of a completed declaration form relieves the vendor of the “good faith” requirement in accepting an exemption certificate and the burden of proving otherwise is on the Department. The “Declaration Form” does not relieve the exempt organization of its tax liability if the purchase from the vendor is later determined to be taxable.

(c) *Sales by exempt organizations.*

(1) *General.* An exempt organization making sales of tangible personal property or services has the same responsibility as another vendor under the sales tax law, even though sales are made to members, students, patients, employees or other persons directly associated with the organization. If taxable property is sold, the fact that the organization selling it made no profit from its sale, or if payment is called a donation, will not excuse the selling organization from collecting and remitting the tax, or from registering with the Department.

(2) *Isolated sale.* An exempt organization need not collect and remit tax upon the sale of property in an isolated sale as defined in § 32.1 (relating to definitions).

(3) *Food and beverages.* An exempt organization which is either engaged in the business of catering or the operation of a restaurant, cafe, lunch counter or other eating place for the purpose of selling prepared food or beverages is required to obtain a sales tax license number and collect and remit tax upon its sales of food or beverages unless the sales of food or beverages:

(i) Qualifies as an isolated sale as defined by § 32.1.

(ii) Are made on the premises of a school or church in the ordinary course of its activities.

*Example:* F, a volunteer firemen’s organization sells fish dinners regularly on Friday evenings in order to raise money to build a new firehouse. As F is operating an eating place and does not qualify for the isolated sale exemption, F shall obtain a sales tax license and collect and remit tax on its sale of food.

(4) *Purchases of property for resale.* An exempt organization purchasing property for resale in connection with fundraising activities is required to hold a Pennsylvania sales tax license number for the purpose of collecting tax, unless the sale qualifies as an isolated sale as defined in § 32.1.

(i) The organization’s sales tax license number shall be inserted on a sales and use tax exemption certificate along with the required wording that the property being purchased will be resold. The 75 exemption number which is only issued to exempt organizations, is not a sales tax license number and may not be used by the organization in purchasing tax free property for resale.

(ii) If the sale of the property qualifies as an isolated sale, a sales tax license number is not required. The organization shall tender to the vendor a unit exemption certificate setting forth the dates of sale of the property being purchased. A separate unit exemption certificate shall be tendered by the exempt organization for each purchase which will be resold by the exempt organization as an isolated sale and shall be retained by the vendor. Vendors who sell property to an exempt organization claiming the isolated sale, on four or more occasions or wherever the property will be sold in excess of 7 days in a calendar year are required to collect the applicable Pennsylvania sales tax from the exempt organization. An example of this type of transaction is as follows:

*Example:* Exempt organization E makes purchases of property for resale on three separate occasions during the calendar year. E files a unit exemption certificate for each purchase. Set forth on each certificate is an explanation that the property will be sold during a period of 2 days. Thereafter, E makes a fourth purchase of property and tenders an exemption certificate to the supplier. The attachment to the certificate indicates that the property will be sold in an isolated sale during a period of 2 days. The supplier is not permitted to accept the exemption certificate in good faith. Unless E has a sales tax license number entitling it to purchase the property for resale, the supplier is required to charge Pennsylvania sales tax on this sale of the property to E since the fourth sale does not qualify as an isolated sale.

(5) *Sales tax licenses.* An exempt organization which makes taxable sales shall obtain one of two types of sales tax licenses.

(i) *Permanent license.* If the organization anticipates making taxable sales on a continuing basis, it shall obtain a permanent sales tax license which shall be obtained by filing an application with the Department, Attn: Registration Division. See also § 34.3 (relating to tax returns).

(ii) *Temporary license.* If the organization anticipates making taxable sales only within a 90-day period, it shall obtain a temporary license which requires the filing of one return for the total period of the sale. Temporary sales tax licenses shall be obtained from a district office of the Department.

(6) *Returns.* Failure of the exempt organization to file the sales tax return or to provide the required information requested therein may result in the revocation of the organization's exempt status.

#### Authority

The provisions of this § 32.21 issued under The Fiscal Code (72 P. S. § 6); and the Tax Reform of 1971(72 P. S. §§ 7270 and 8291); amended under The Fiscal Code (72 P. S. § 6).

**Source**

The provisions of this § 32.21 amended February 15, 1985, effective February 16, 1985, 15 Pa.B. 576; amended January 9, 1987, effective January 10, 1987, 17 Pa.B. 186; amended December 23, 1994, effective December 24, 1994, 24 Pa.B. 6437; corrected March 17, 1995, effective December 1, 1990, 25 Pa.B. 954. Immediately preceding text appears at serial pages (179259) to (179260), (149577) to (149578), (184055) to (184056) and (190179).

**Cross References**

This section cited in 61 Pa. Code § 32.25 (relating to steam, gas, electricity, fuel oil and kerosene); 61 Pa. Code § 42.5 (relating to nonprofit educational stations); 61 Pa. Code § 47.17 (relating to lease or rental of vehicles and rolling stock); 61 Pa. Code § 60.7 (relating to sale and preparation of food and beverages); 61 Pa. Code § 60.17 (relating to sale of food and beverages by nonprofit associations which support sports programs); and 61 Pa. Code § 60.20 (relating to telecommunications service).

**§ 32.22. Sales to the United States Government or within areas subject to the jurisdiction of the Federal Government.**

(a) *Sales to the United States.* Sales of tangible personal property or services to the Government of the United States are not subject to tax under the act. Tax need not be collected on the sales to a regular department, such as Defense, Interior, Agriculture, Post Office, Commerce of the United States. Reference should be made to § 32.2 (relating to exemption certificates). Federal Reserve Banks and their branch banks are exempt from the payment of sales and use taxes under the act. Reference should also be made to section 7 of the Federal Reserve Act (12 U.S.C.A. § 290). However, commercial banks which are merely member banks of the Federal Reserve System are subject to sales and use tax. The only banks in the Commonwealth entitled to this exemption are the Federal Reserve Bank of Philadelphia, District No. 3, and the Pittsburgh Branch of the Federal Reserve Bank of Cleveland, District No. 4.

(b) *Nonexempt agencies.* National Banks, Federal Savings and Loan Associations, Joint Stock Land Banks, National Park Concessionaires, The Atomic Energy Commission, Federal licensees such as warehouses and stockyards, and construction contractors engaged in the improvement of real estate such as buildings, roads, structures, bridges owned by an exempt Federal agency, and similar corporations, companies, institutions or persons may not be exempt.

(c) *Sales within Federal areas.* Sales of tangible personal property by persons doing business in a Federal area within the borders of this Commonwealth shall be taxable unless specifically exempt by some other regulation. The vendor shall collect the tax at the time of sale.

**Cross References**

This section cited in 61 Pa. Code § 47.17 (relating to lease or rental of vehicles and rolling stock); 61 Pa. Code § 58.13 (relating to carpeting and other floor coverings); and 61 Pa. Code § 60.20 (relating to telecommunications service).

**§ 32.23. Sales to the Commonwealth or its political subdivisions and sales by the Commonwealth and its political subdivisions.**

(a) Sales of tangible personal property or services to the Commonwealth, or its instrumentalities or political subdivisions, are not taxable under section 204(12) of the TRC (72 P. S. § 7204(12)). Sales to the individual teachers, school principals or other employes are taxable. The transaction is exempt only when the sale is made and invoiced directly to the exempt entity.

(1) Instrumentalities include departments, boards, commissions of the Commonwealth and public authorities created under the Municipality Authorities Act of 1945 (53 P. S. §§ 301—322). Other public authorities claiming an exemption status shall make application to the Department of Revenue, Harrisburg, Pennsylvania. Attention: Office of Chief Counsel.

(2) Political subdivisions include county, city, borough, incorporated town, township, school district, vocational school district and county institution district.

(b) The sale to or use of tangible personal property by construction contractors in the construction, reconstruction, remodeling, repair and maintenance of real estate, including buildings, roads, structures and bridges, for or on behalf of the Commonwealth or its political subdivisions, is subject to tax.

(c) The sale at retail of personal property, which is taxable according to the TRC, is subject to the imposition of tax. These entities are permitted to purchase items for resale using the “resale” exemption and they shall register with the Department for the charging, collecting and reporting of tax.

**Source**

The provisions of this § 32.23 amended September 14, 1984, effective September 15, 1984, 14 Pa.B. 3366; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5345. Immediately preceding text appears at serial pages (149581) to (149582).

**Cross References**

This section cited in 61 Pa. Code § 32.1 (relating to definitions); 61 Pa. Code § 47.17 (relating to lease or rental of vehicles and rolling stock); 61 Pa. Code § 58.13 (relating to carpeting and other floor coverings); and 61 Pa. Code § 60.20 (relating to telecommunications service).

**§ 32.24. Sales to ambassadors, ministers and consular officers of foreign governments.**

(a) *Diplomatic exceptions.* Sales to ambassadors, ministers and other diplomatic representatives of foreign governments are not subject to tax in accordance with provisions established by the Office of Foreign Missions, United States Department of State. The exemption from tax is evidenced by the tax exemption

card issued by the United States Department of State. Restrictions on the exemption from tax will be indicated on the exemption card.

(b) *Procedural requirements for diplomatic exemptions.* A person entitled to the diplomatic exemption from the tax is required to make application to the Office of Foreign Missions, United States Department of State. This Federal agency will issue a Tax Exemption Card to each individual qualifying for exemption from tax. The Department will recognize the exemption from tax granted to these individuals in accordance with the restrictions provided on the tax exemption card.

(c) *Sales made to individuals qualifying for diplomatic exemption from tax.* A vendor shall retain a completed exemption certificate form which supports the tax exempt transaction. The Federal tax exemption number shall be included on the exemption certificate.

#### Source

The provisions of this § 32.24 amended June 15, 1990, effective June 16, 1990, 20 Pa.B. 3160. Immediately preceding text appears at serial pages (94375) to (94376).

#### Cross References

This section cited in 61 Pa. Code § 47.17 (relating to lease or rental of vehicles and rolling stock); and 61 Pa. Code § 58.13 (relating to carpeting and other floor coverings).

### § 32.25. Steam, gas, electricity, fuel oil and kerosene.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Commercial use*—The use or consumption within that portion of a structure or other area which is for use other than a residential use.

*Residential use*—The use or consumption within that portion of a structure used as a home, dwelling, private residence, condominium, housing cooperative, mobile home, camper, summer home, motor home or similar place of abode. The term includes the use or consumption by a condominium association or housing cooperative association which acts on behalf of residents who are using the units as their personal residence.

(b) *Scope.*

(1) The purchase or use of steam, natural and manufactured gas and electricity, through a metered device; bottled gas; fuel oil; or kerosene by a residential purchaser solely for the purchaser's own residential use is exempt from tax.

(2) The purchase or use of steam, natural and manufactured gas and electricity, through a metered device; bottled gas; fuel oil; or kerosene other than by a residential purchaser for the purchaser's own residential use, is presumed to be made for a commercial use and is subject to tax, unless the purchaser is entitled to claim an exemption under subsection (d).

(3) The purchase or use of steam, natural and manufactured gas and electricity, through a metered device; bottled gas; fuel oil; or kerosene; by a residential purchaser for both the purchaser's own residential use and a commercial use is presumed to be made for commercial use and is subject to tax. If the purchaser tenders a "Sales and Use Tax Exemption Certificate" (Form REV-1220) to the vendor indicating thereon, at "other" on the reverse side of the form, the annualized percentage of the total gallons, kilowatt hours, metric feet, and the like, used by the purchaser solely for the purchaser's own residential use, the seller may accept the certificate in good faith and charge tax only upon the remaining portion of the purchase. Residential purchasers who utilize this procedure are required to tender supplemental exemption certificates to the seller if the annualized percentage of exempt use changes following the filing of the original exemption certificate. The residential purchaser shall retain the information supporting the estimate of taxable and nontaxable use.

(c) *Equipment and supplies.* The purchase, use, lease, repair or maintenance of equipment and supplies, such as propane tanks, wire, meters, panel boards, switch gear and similar property by either a residential or commercial purchaser for use in connection with the consumption of steam, gas, electricity, fuel oil or kerosene is subject to tax, unless the purchaser is entitled to claim an exemption under subsection (d).

(d) *Exemptions.*

(1) *Resale.* The purchase of bottled gas, fuel oil or kerosene by persons who will resell the property to others in the ordinary course of the purchaser's business is exempt from tax. Likewise, the purchase of steam, natural and manufactured gas or electricity by persons who will resell the steam, natural and manufactured gas or electricity through a metered device in the ordinary course of the purchaser's business is exempt from tax. The purchase of steam, natural or manufactured gas or electricity which is resold by a method other than through a metered device is not a purchase for resale and the purchaser is not permitted to claim the resale exemption. The purchase or lease of equipment and supplies by persons who will resell or lease tangible personal property in the ordinary course of the purchaser's business to others is exempt from tax.

(2) *Other exemptions.*

(i) The purchase of steam, natural and manufactured gas and electricity, through a metered device; bottled gas; fuel oil; or kerosene; by the United States Government, or the Commonwealth, its instrumentalities and political subdivisions is exempt from tax. Other purchasers may be entitled to claim a direct use exemption. Reference should be made to the applicable sections of this title for a more detailed explanation of the exemption as follows:

(A) Exempt organizations—§ 32.21 (relating to charitable, volunteer firemen's, religious organizations and nonprofit educational institutions).

(B) Dairying—§ 32.31 (relating to dairying).

(C) Manufacturing, processing—§ 32.32 (relating to manufacturing; and processing).

(D) Farming—§ 32.33 (relating to farming).

(E) Public utilities—§ 32.34 (relating to public utilities).

(F) Mining—§ 32.35 (relating to mining).

(G) Printing—§ 32.36 (relating to printing and related businesses).

(H) Photographers, photofinishers—§ 32.37 (relating to photographers and photofinishers).

(ii) The exempt purchaser or lessee shall complete and submit to the seller or lessor an exemption certificate, completed under § 32.2 (relating to exemption certificates), as to that portion of the total purchase qualifying for exemption.

(3) *Exemptions provided by statutes other than the sales tax law.*

(i) The purchase or use of steam, natural and manufactured gas and electricity through a metered device; bottled gas; fuel oil; or kerosene and equipment and supplies by the following organizations is exempt from tax:

(A) Municipal authorities created under the Municipal Authorities Act of 1945 (53 P. S. §§ 301—322).

(B) Electrical cooperative corporations created under 15 Pa.C.S. §§ 7301—7359 (relating to electrical cooperative law of 1990).

(C) Agricultural cooperatives under the jurisdiction of the Cooperative Agricultural Association Corporate Net Income Tax Act (72 P. S. §§ 3420-21—3420-30).

(ii) An organization claiming an exemption under this paragraph shall insert the section of the applicable statute under which it is claiming the exemption on an exemption certificate, which the organization shall submit to the supplier.

(4) *Examples.*

(i) The purchase or use of steam, natural and manufactured gas, electricity, bottled gas, fuel oil or kerosene, by a contractor during the construction of a residential home is subject to tax.

(ii) The purchase or use of steam, natural and manufactured gas, electricity, bottled gas, fuel oil or kerosene, by one person for use by another

person is subject to tax. This includes the purchase by a corporation for use by a corporate officer, employe or stockholder.

(iii) The purchase or use of steam, natural and manufactured gas, electricity, bottled gas, fuel oil or kerosene, by an apartment complex for use by the tenants is subject to tax, unless the apartment complex resells the property or service through a metering device to the individual tenants.

(iv) The purchase or use of steam, natural and manufactured gas, electricity, bottled gas, fuel oil or kerosene by a condominium association or cooperative housing association for use by the residential owners or tenants is exempt from tax. The exemption also applies to the residential owners or tenants share of "common area expenses" for the entire complex. A condominium association or a cooperative housing association is required to pay tax on that portion of the purchase of steam, natural and manufactured gas, electricity, bottled gas, fuel oil or kerosene purchased for use by commercial businesses and residential owners who lease their premises to others as well as "common area expenses" for the commercial businesses and leased premises.

(v) The purchase and use of electricity and natural gas by an accountant who maintains an office in the accountant's residence would require an apportionment of the use of the utility service between the residence and the office. To apportion the usage, an analysis of the exempt usage shall be made. Any reasonable method of apportionment may be used. For example, the accountant may estimate the exempt use of gas to heat the residence by comparing the square footage of the residence with the square footage of the office. The accountant may estimate the exempt use of electricity by comparing the consumption of electricity in the residence with the total consumption of electricity in the office. The exemption for gas and electricity, expressed as a percentage, would be claimed by the accountant through the use of an exemption certificate tendered to the vendor.

(vi) The purchase and use of steam, natural and manufactured gas, electricity, bottled gas, fuel oil or kerosene by a person engaged in the business of manufacturing, processing, farming, dairying, printing, mining, rendering a public utility service, photography or photofinishing, may require apportionment between taxable and exempt use if a portion of the purchase is used directly in one or more of these business operations. To apportion the usage, an analysis of exempt usage shall be made. Any reasonable method of apportionment may be used. For example, the purchaser may estimate the exempt use of electricity through each meter by analyzing the electrical consumption of each item of equipment used directly by the purchaser in its manufacturing operation. This analysis should be annualized to reflect consumption during the entire calendar year. The resulting percentage of exempt use may be claimed by the purchaser upon the total monthly purchase of electricity through that meter. The exemption upon the purchase of electricity,

expressed as a percentage, would be claimed through the use of an exemption certificate tendered to the vendor.

**Source**

The provisions of this § 32.25 amended March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322; amended September 24, 1993, effective September 25, 1993, 23 Pa.B. 4505. Immediately preceding text appears at serial page (179263).

**BUSINESS EXEMPTIONS**

**§ 32.31. Dairying.**

(a) *Equipment, machinery, parts and foundations therefor and supplies used directly in dairying.* The purchase or use of tangible personal property or services performed thereon by a person engaged in the business of dairying shall be exempt from tax if the property is predominantly used directly by him in dairying operations. Purchases of vehicles required to be registered under 75 Pa.C.S. §§ 101—9821 (relating to the Vehicle Code) as well as supplies and repair parts for the vehicles are subject to tax. There is no exemption for maintenance facilities or for materials or supplies to be used or consumed in a construction, reconstruction, remodeling, repair or maintenance of real estate other than machinery, equipment or parts therefor that may be affixed to the real estate. Beginning March 4, 1971, foundations for equipment and machinery became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations used to support equipment, machinery and parts used directly in dairying shall be exempt from tax.

(1) *Direct use.* In determining whether property is directly used, consideration shall be given to the following factors:

- (i) The physical proximity of the property in question to the production process in which it is used.
- (ii) The proximity of the time and use of the property in question to the time of use of other property used before and after it in the production process.
- (iii) The active causal relationship between the use of the property in question and the production of a dairy product.
- (iv) The fact that particular property may be considered essential to the conduct of the business of dairying because its use is required either by law or practical necessity does not, of itself, mean that the property is used directly in dairying operations.

(2) *Property directly used; predominant use.* The purchase or use by a dairyman of property in the following categories, when predominantly used directly in dairying, shall be exempt from tax. Where a single unit of the property is put to use in two different activities, one of which is a direct use and the

other of which is not, the property may not be exempt from tax unless the dairyman makes use of the property more than 50% of the time directly in dairying operations.

(i) *General.* Machinery, equipment, parts and foundations therefor, and supplies which are used in the actual production or to transport, convey, handle or store milk and milk products from the time the raw milk enters the clarifier to the time the milk is bottled and capped, shall be considered to be directly used in dairying operations. The operations include clarifying, homogenization, pasteurization and cooling after pasteurization. Repair parts which are installed and become an integral part of such property shall also be exempt from tax. Effective March 4, 1971, foundations for machinery and equipment shall be subject to tax.

(ii) *Testing and inspection.* Property used to test raw milk prior to its use, and inspect milk and milk products throughout the production cycle, shall be considered to be directly used in dairying operations.

(iii) *Cleaning of returnable containers.* Property used to wash, sterilize or inspect returnable containers prior to their being filled shall be exempt when used in packaging a dairy product if the container will be delivered to the ultimate consumer.

(iv) *Packaging; preserving.* Wrapping equipment and supplies, including internal packing materials and returnable containers, used in packaging which passes to the ultimate consumer are directly used and, therefore, shall be exempt. Property which prevents or deters the occurrence of natural processes which, if not prevented or deterred, would spoil a dairy product shall be exempt from tax. Examples of the property include disinfectants and sterilizing agents used upon milk tanks, milk machinery and equipment and milk containers, refrigerating equipment used to preserve milk products while in production, and chemicals used to control insects, vermin and pests. However, equipment and supplies used to apply such property, including sprayers and brushes, shall be subject to tax.

(v) *Research.* Property which is used directly in research activities shall be exempt from tax, provided that the object of the research is the production of a new or improved product or method of producing a product. The exemption does not apply to property used in market research or in other research which is conducted with the objective of improving administrative efficiency.

(3) *Property not directly used.* Property in the following categories is not directly used in dairying operations, and the purchase or use of the property shall be subject to tax.

(i) *Real estate.* The term dairying does not include the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate. The purchase or use of tangible personal prop-

erty, by a dairyman for that purpose shall be subject to tax, even though the structure may house or otherwise contain equipment or other facilities used directly in dairying.

(ii) *Maintenance facilities.* Maintenance, service and repair work is not a dairying operation. Maintenance facilities, including tools, equipment and supplies predominantly used in performing the work. (For example: chain hoists, tire spreaders, welding equipment, drills, sanders, wrenches, paint brushes and sprayers, oilers, absorbent compounds, dusting compounds, air blowers and wipers) shall be subject to tax. However, replacement parts which are used to replace worn parts upon exempt machinery and equipment (For example: motors, belts, screws, bolts or gears) and operating supplies which are actively and continuously used in the operation of exempt machinery and equipment (For example: fuel, lubricants, paint and compressed air) shall be also exempt from the tax. Equipment and supplies, including soaps and cleaning compounds, brushes, brooms, mops, and similar items, used in general cleaning and maintenance of dairy property shall be subject to tax.

(iii) *Managerial, sales or other nonoperational activities.* Property used in managerial, sales or other nonoperational activities is not directly used in dairying and, therefore, shall be subject to tax. This category includes but is not limited to property used in any of the following activities:

(A) *Dairy management and administration.* Office furniture, supplies and equipment, textbooks and other educational materials, books and records and all other property used in dairy record-keeping and other administrative and managerial work, whether on or off the production line, is subject to tax. The property includes, but is not limited to, supplies used to record the quality and quantity of work in production or goods in storage, the flow of work, the results of inspection or to instruct workers in routing work or other production activities.

(B) *Selling and marketing.* Property used in advertising dairy products for sale or in marketing, transporting dairy products to a market or to customers or selling dairy products, is not within the scope of the dairying exemption.

(C) *Exhibition of dairy products.* Property used in the exhibition of dairy products or of dairy operations shall be subject to tax.

(D) *Safety and fire prevention.* Property used to prevent or fight fires and equipment and supplies used for the programs as safety, accident prevention or fire prevention shall be subject to tax, even though such equipment or property is required by law, except for drugs, medicines and medical supplies exempted by section 204(17) of the TRC (72 P. S. § 7204(17)).

(E) *Employe use.* Property used for the personal comfort, convenience or use of employes, are subject to tax. Protective equipment, such as face

masks, helmets, gloves, coveralls, goggles and the like worn by production personnel are exempt from tax.

(F) *Space heating, cooling, ventilation and illumination.* Property, such as machinery, equipment, fuel or power used to ventilate buildings, lighting for general illumination, air conditioning and other space cooling and space heating equipment are subject to tax unless its use is required in order to prevent the spoilage of dairy products.

(G) *Preproduction activities.* Property used to transport personnel or to collect, convey or transport raw milk and other property, and storage facilities or devices used to store or hold property, prior to its use in the first production stage, clarifying, are subject to tax.

(H) *Property used during production.* Property used in managerial, sales or other nonoperational activities are subject to tax even though it is used during the production operation. Illustrations of the property include safety, heating and ventilation equipment; planking or grating for crosswalks or platforms and maintenance equipment or facilities.

(I) *Postproduction activities.* Property used to transport or convey the finished product from the final dairying operation (which includes but does not extend beyond the operation of packaging for the ultimate consumer), and storage facilities or devices used to store the product, are not used directly in dairying and are taxable. For example, casing equipment, which loads glass bottles or paper bottles of milk into cases for ease of handling in delivery, is subject to tax. The cases used for this purpose is likewise taxable. Machinery, equipment, supplies and other property used to convey, transport, handle or store packaged milk shall be taxable.

(J) *Waste disposal.* Property used for waste handling and removal is not deemed to be directly used and shall be subject to tax.

(b) *Materials incorporated as components into dairy products.* The sale of personal property which will be physically incorporated by the dairyman as an ingredient or constituent of dairy products which will be sold in the regular course of his business, is a sale for resale. These materials may be purchased by the dairyman free of tax upon his presentation to the vendor of a properly executed exemption certificate certifying that the purchase is for resale. When the dairy is not licensed with the Department it shall be required to explain on the reverse side of the certificate why a sales tax number is not required.

(c) *Use of exemption certificate.* When a dairyman purchases exempt property under this section, he is required to prepare and deliver to the vendor a properly executed exemption certificate.

#### Source

The provisions of this § 32.31 amended through March 9, 1984, effective March 10, 1984, 14 Pa.B. 843. Immediately preceding text appears at serial pages (83003) to (83007).

**Cross References**

This section cited in 61 Pa. Code § 32.1 (relating to definitions); and 61 Pa. Code § 32.25 (relating to steam, gas, electricity, fuel oil and kerosene).

**§ 32.32. Manufacturing; processing.**

(a) *Equipment, machinery, parts and foundations therefor and supplies used directly in manufacturing or processing.* The purchase or use of tangible personal property or services performed thereon by a person engaged in the business of manufacturing or processing is exempt from tax if the property is predominantly used directly by him in manufacturing or processing operations. Purchases of vehicles required to be registered under 75 Pa.C.S. §§ 101—9821 (relating to the Vehicle Code) as well as supplies and repair parts for the vehicles shall be subject to tax. There is no exemption for maintenance facilities or for materials or supplies to be used or consumed in construction, reconstruction, remodeling, repair or maintenance of real estate other than machinery, equipment or parts therefor that may be affixed to the real estate. Beginning March 4, 1971, foundations for equipment and machinery became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations used to support equipment, machinery and parts used directly in manufacturing or processing shall be exempt from tax.

(1) *Direct use.* In determining whether property is directly used, consideration shall be given to the following factors:

(i) The physical proximity of the property in question to the production process in which it is used.

(ii) The proximity of the time of use of the property in question to the time of use of other property used before and after it in the production process.

(iii) The active causal relationship between the use of the property in question and the production of a product. The fact that particular property may be considered essential to the conduct of the business of manufacturing or processing because its use is required either by law or practical necessity does not of itself, mean that the property is used directly in the manufacturing or processing operations.

(2) *Property directly used; predominant use.* The purchase or use by a manufacturer or processor of property in the following categories, when predominantly used directly in manufacturing or processing, shall be exempt from tax. Where a single unit of the property is put to use in two different activities, one of which is a direct use and the other of which is not, the property may not be exempt from tax unless the manufacturer or processor makes use of the property more than 50% of the time directly in manufacturing or processing operations.

(i) *General.* Machinery, equipment, parts and foundations therefor, and supplies which are used in the actual production or to transport, convey,

handle or store the product from the first production operation to the time the product is packaged for the ultimate consumer are considered to be directly used in manufacturing-processing operations. Repair parts which are installed and become an integral part of such property shall also be exempt from tax.

(ii) *Pollution control devices.* Equipment, machinery and supplies designed and used to control, abate or prevent air, water or noise pollution generated in the manufacturing or processing operation shall be deemed to be directly used in manufacturing or processing and, therefore, is not subject to tax. In order for property to qualify as exempt pollution control devices it is not necessary that the pollutants be recycled or used in any manner.

(iii) *Testing and inspection.* Property used to test and inspect the product throughout the production cycle, shall be considered to be directly used in manufacturing-processing operations.

(iv) *Cleaning of returnable containers.* Property used to wash, sterilize or inspect returnable containers prior to their being filled shall be exempt when used in packaging the product if the container will be delivered to the ultimate consumer.

(v) *Packaging.* Wrapping equipment and supplies, including internal packing materials and returnable containers, used in packaging which passes to the ultimate consumer are directly used and therefore shall be exempt.

(vi) *Research.* Property which is used directly in research activities shall be exempt from tax, provided that the object of the research is the production of a new or improved product or method of producing a product. The exemption does not apply to property used in market research or in other research which is conducted with the objective of improving administrative efficiency.

(3) *Property not directly used.* Property in the following categories is not directly used in manufacturing or processing operations and the purchase or use of the property shall be subject to tax.

(i) *Real estate.* The terms manufacturing or processing do not include the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate. The purchase or use of tangible personal property by a manufacturer or processor for the purpose shall be subject to tax, even though the structure may house or otherwise contain equipment or other facilities used directly in manufacturing or processing.

(ii) *Maintenance facilities.* Maintenance, service and repair work is not a manufacturing operation. Maintenance facilities, including tools, equipment and supplies predominantly used in performing the work (For example: chain, hoists, tire spreaders, welding equipment, drills, sanders, wrenches, paint brushes and sprayers, oilers, absorbent compounds, dusting compounds, air blowers and wipers) shall be subject to tax. However, replacement parts which are used to replace worn parts upon exempt machinery and

equipment (For example: motors, belts, screws, bolts, cutting edges, air filters or gears) and operating supplies which are actively and continuously used in the operation of exempt machinery and equipment (For example: fuel, lubricants, paint and compressed air) shall be exempt from tax. Equipment and supplies, including soaps and cleaning compounds, brushes, brooms, mops, and similar items, used in general cleaning and maintenance of manufacturing or processing property shall be subject to tax. Installation and repair of property for others is not manufacturing or processing, whether the work is performed for or by a manufacturer or processor. This is so whether the property installed or repaired is manufactured or processed by the installer or repairman or someone else.

(iii) *Managerial sales or other nonoperational activities.* Property used in managerial, sales or other nonoperational activities is not directly used in manufacturing or processing and shall be therefore subject to tax. This category includes but is not limited to property used in any of the following activities:

(A) *Management and administration.* Office furniture, supplies and equipment, textbooks, and other educational materials, books and records, and all other property used in manufacturing or processing record keeping and other administrative and managerial work, whether on or off the production line, shall be subject to tax. The property includes, but is not limited to supplies used to record the quality and quantity of work in production or goods in storage, the flow of work, the results of inspection or to instruct workers in routing work or other production activities.

(B) *Selling and marketing.* Property used in advertising manufactured or processed products for sale or in marketing, transporting the products to a market or to customers, or selling the products, is not within the scope of the manufacturing-processing exemption.

(C) *Exhibition of manufactured or processed products.* Property used in the exhibition of manufactured or processed products or of manufacturing or processing operations shall be subject to tax.

(D) *Safety and fire prevention.* Property used to prevent or fight fires and equipment and supplies used for such programs as safety, accident prevention or fire prevention shall be subject to tax, even though the equipment or property is required by law, except for drugs, medicines and medical supplies exempted by section 204(17) of the TRC (72 P. S. § 7204(17)).

(E) *Employe use.* Property used for the personal comfort, convenience or use of employes, shall be subject to tax. However protective equipment, such as face masks, helmets, gloves, coveralls, goggles and the like, worn by production personnel shall be exempt from tax.

(F) *Space heating, cooling, ventilation and illumination.* Property, such as machinery and equipment, fuel or power used to ventilate build-

ings, lighting for general illumination, air conditioning and other space cooling and space heating equipment, shall be subject to tax unless it is established that the use of such property bears an active causal relationship to the manufacturing or processing operation.

(G) *Preproduction activities.* Property used to transport personnel or to collect, convey or transport other property, and storage facilities or devices used to store or hold property, prior to its use in the first production stage shall be subject to tax.

(H) *Property used during production.* Property used in managerial, sales or other nonoperational activities shall be subject to tax even though it is used during the production operation. Illustrations of the property include safety, heating and ventilation equipment, planking or grating for cross-walks or platforms, and maintenance equipment or facilities.

(I) *Post production activities.* Property used to transport or convey the finished product from the final manufacturing or processing operation, which includes but does not extend beyond the operation of packaging for the ultimate consumer, and storage facilities or devices used to store the product, are not used directly in manufacturing or processing and are taxable. For example, equipment which loads packaged products into cases or cartons for ease of handling in delivery shall be subject to tax. Machinery, equipment, supplies and other property used to convey, transport, handle or store the packaged product shall also be taxable.

(J) *Waste disposal.* Property used in waste handling and disposal of pollutants shall not be deemed to be directly used and shall be subject to tax unless such property qualifies for exemption under the provisions of subsection (a)(2)(ii).

(b) *Materials incorporated as components into manufactured or processed products.* The sale of personal property which will be physically incorporated by the manufacturer or processor as an ingredient or constituent of products which will be sold in the regular course of his business, is a sale for resale. These materials may be purchased by the manufacturer or processor free of tax upon his presentation to the vendor of a properly executed Exemption Certificate certifying that the purchase is for resale. When the manufacturer is not licensed with the Bureau he shall be required to explain on the reverse side of the certificate why a sales tax number is not required.

(c) *Use of exemption certificate.* When a manufacturer or processor purchases exempt property under the provisions of this section, he shall be required to prepare and deliver to the vendor a properly executed exemption certificate.

#### Authority

The provisions of this § 32.32 issued under section 270 of the Tax Reform Code (72 P. S. § 7270).

**Source**

The provisions of this § 32.32 amended through March 9, 1984, effective March 10, 1984, 14 Pa.B. 843. Immediately preceding text appears at serial pages (83007) to (83011).

**Notes of Decisions**

A laboratory's analysis, research and testing of client-provided products did not constitute a transformation of property or otherwise satisfy the definition of "manufacturing" as would entitle it to an exclusion from use tax. *Lancaster Laboratories Inc. v. Commonwealth*, 611 A.2d 815 (Pa. Cmwlth. 1992).

Wheel loaders are predominantly directly used in the process of manufacturing asphalt and therefore, qualify for the exclusion from Pennsylvania Sales and Use Tax. *Union Paving Co. v. Commonwealth*, 611 A.2d 360 (Pa. Cmwlth. 1992).

The extent to which laboratory used equipment directly in testing and inspection of products in manufacturer's production cycle brought it within testing and inspection exemption to use tax but use of equipment to develop information to be employed in labelling products is neither within testing and inspection nor research provision of manufacturing exemption. *Lancaster Laboratories, Inc. v. Commonwealth*, 578 A.2d 988 (Pa. Cmwlth. 1990).

Making pizza is the making of a bakery product and for which equipment, machinery and supplies in the process were entitled to the manufacturer's exemption under the use tax regulations. *Fleet Pizza, Inc. v. Commonwealth*, 547 A.2d 523 (Pa. Cmwlth. 1988).

A pizza franchise was entitled to the manufacturer's exemption for its equipment, machinery and supplies and therefore was entitled to a use tax refund. *Fleet Pizza Inc. v. Commonwealth*, 538 A.2d 642 (Pa. Cmwlth. 1988).

Computer used only to set up production schedules and not to control the operation of the production line is not considered directly used in manufacturing since the use is mere preparation for the production process and there is no active casual relationship between the computer and the production of finished product and is not exempt from the use tax. *W. N. Dambach, Inc. v. Commonwealth*, 488 A.2d 96 (Pa. Cmwlth. 1985).

Equipment used by a sanitary landfill for the disposal of industrial hazardous wastes shall be deemed to be directly used in manufacturing and shall not be subject to sales or use tax, while equipment used for the disposal of nonhazardous industrial and residential wastes is not exempt from tax; therefore, in order for such equipment to be deemed directly used in the manufacturing process, at least 50% of its use must be attributable to the disposal of hazardous wastes. *Kelly Run Sanitation, Inc. v. Commonwealth*, 487 A.2d 58 (Pa. Cmwlth. 1985).

Engineering supplies, which were not used by corporation more than 50% of the time directly in manufacturing or processing operations and which were also used for ordering and marketing purposes, and were used prior to the commencement of first production stage, were not "predominantly used" directly for manufacturing; therefore these supplies were not excluded from use tax under this section. *Oberg Manufacturing Co., Inc. v. Commonwealth*, 486 A.2d 1047 (Pa. Cmwlth. 1985).

There is an active causal relationship between the preparation of art work and the photographic conversion of art work into printing plates, such that all essential steps in the process directly constitute part of the production process in printing. *Westinghouse Electric Corp. v. Board of Finance and Revenue*, 417 A.2d 800 (Pa. Cmwlth. 1980).

**Cross References**

This section cited in 61 Pa. Code § 31.21 (relating to advertising agencies); 61 Pa. Code § 32.1 (relating to definitions); 61 Pa. Code § 32.25 (relating to steam, gas, electricity, fuel oil and kerosene); 61 Pa. Code § 32.36 (relating to printing and related businesses); 61 Pa. Code § 41.8 (relating

to recapping and retreading of tires); 61 Pa. Code § 44.4 (relating to guns and ammunition); 61 Pa. Code § 52.2 (relating to fabrication of dental prosthetics); 61 Pa. Code § 52.4 (relating to sellers and repairers of eyeglasses); and 61 Pa. Code § 60.9 (relating to premium cable services).

### § 32.33. Farming.

(a) *Equipment, machinery, parts and foundations therefor and supplies used directly in farming.* The purchase or use of tangible personal property or services performed thereon by a person engaged in the business of farming is exempt from tax if the property is predominantly used directly by him in farming operations. Purchases of vehicles required to be registered under 75 Pa.C.S. §§ 101—9821 (relating to the Vehicle Code) as well as supplies and repair parts for the vehicles are subject to tax. There shall be no exemption for maintenance facilities or tools, materials or supplies which are used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate or farm equipment. Beginning March 4, 1971, foundations for equipment and machinery became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations used to support equipment, machinery and parts used directly in farming shall be exempt from tax.

(1) *Direct use.* In determining whether property is directly used, consideration shall be given to the following factors:

(i) The physical proximity of the property in question to the production process in which it is used.

(ii) The proximity of the time and use of the property in question to the time of use of other property used before and after it in the production process.

(iii) The active causal relationship between the use of the property in question and the production of a farm product. The fact that particular property may be considered essential to the conduct of the business of farming because its use is required either by law or practical necessity does not, of itself, mean that the property is used directly in farming operations.

(2) *Property directly used; predominant use.* The purchase or use by a farmer of property in the following categories, when predominantly used directly in farming, is exempt from tax. When a single unit of the property is put to use by a farmer in two different activities, one of which is a direct use and the other of which is not, the property is not exempt from tax unless the farmer makes use of the property more than 50% of the time directly in farming operations.

(i) *General.* Machinery, equipment, parts and foundations therefor, and supplies which are used in actual farm production, or to transport, convey, handle or store the product during the production are considered to be directly used in farming operations. Repair parts which are installed and become an integral part of the property are also exempt from tax.

(ii) *Testing and inspection.* Property used to test and inspect the product during the actual farm production is considered to be directly used in the farming operations.

(iii) *Cleaning of returnable containers.* Property used to wash, sterilize, or inspect returnable containers prior to their being filled is exempt when used in packaging the product if the container will be delivered to the ultimate consumer.

(iv) *Packaging; preserving.* Wrapping equipment and supplies, including internal packing materials and returnable containers, used in packaging which passes to the ultimate consumer are directly used and therefore exempt. Property used to handle and preserve farm products upon the farm premises, and to prevent or deter the destruction, injury or spoilage of farm products, or productive animals or plants, is exempt from tax. Examples of such property include the following:

(A) Chemicals used for crop pest control and equipment used to dispense it.

(B) Property used to groom productive animals so as to preserve their health (including property such as dehorners, debeakers, and hoof trimmers) and harnesses used to control productive animals on the farm premises.

(C) Refrigeration devices, including ice, used upon the farm premises to preserve the farm product prior to the operation of packaging passing to ultimate consumer.

(D) Chemicals and disinfectants used to clean and sterilize equipment with which milk animals come into direct contact, such as milking equipment, so as to prevent their infection, and to clean and sterilize milk cans so as to prevent spoilage of the milk.

(E) Medicines, cleaning solutions, compounds and supplies used to clean and groom productive animals so as to preserve their health.

(v) *Research.* Property which is used directly in research activities shall be exempt from tax, provided that the object of the research is the production of a new or improved product or method of producing a product. The exemption does not apply to property used in market research or in other research which is conducted with the objective of improving administrative efficiency.

(vi) *Farm products; property which becomes a constituent or a part of a farm product.* Property which is or becomes a constituent or a farm product is used directly in farming operations. Property consumed by productive animals such as feed and food additives, and property used for plant growth such as seed, fertilizer and chemical additives, is also used directly in farming.

(vii) *Planting and tilling; caring for crops or productive animals.* Property which is used to cause other property to become a constituent or part of

a farm product, or to be consumed by productive animals or to foster plant growth shall be exempt from tax. Examples of property include the following:

(A) Seeders, planters, plows, harrows, cultivators, sprayers and similar equipment used to till the soil, to plant seed and to care for and cause the growth of productive plants.

(B) Portable equipment used to feed and water productive animals and to administer medication to them, such as portable tubs, buckets, cans, feed scoops, feed carts, portable watering devices, portable incubators and brooders and artificial breeding equipment.

(C) Fuel used to heat brooders, incubators and greenhouses.

(viii) *Harvesting or collecting farm products.* Property which is used to extract or separate a farm product from productive animals, the soil or plants shall be exempt from tax. The property includes harvesters, combines, binders, forage blowers, milking equipment including strainers and strainer discs, egg collecting equipment, corn shuckers, threshers and manure or feed handling equipment such as shovels, scoops, forks, barn brooms and carts.

(3) *Property not directly used.* Property in the following categories is not used directly in a farming operation and the purchase or use of the property shall be subject to tax.

(i) *Real estate.* The term farming does not include the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate. The purchase or use of tangible personal property by a farmer for such purpose is subject to tax, even though the structure may house or otherwise contain equipment or other facilities used directly in farming. Constructing, remodeling, repairing or maintaining buildings (including houses, garages, barns, stables, greenhouses, mushroom houses and storehouses), fences and stanchions permanently affixed to real estate, dams, roads, spillways and other improvements to real estate, is not a farming operation, and properly used in the work shall be taxable. Activities such as land reclamation, forestry, land clearing, landscaping and similar activities which are intended to improve or preserve real estate, are not farming operations.

(ii) *Maintenance facilities.* Maintenance, service and repair work is not a farming operation. Maintenance facilities, including tools, equipment and supplies predominantly used in performing the work (For example: chain hoists, tire spreaders, welding equipment, drills, sanders, wrenches, paint brushes and sprayers, oilers, absorbent compounds, dusting compounds, air blowers and wipers) is subject to tax. However, replacement parts which are used to replace worn parts upon exempt machinery and equipment (For example: motors, belts, screws, bolts, cutting edges, air filters or gears) and operating supplies which are actively and continuously used in the operation of exempt machinery and equipment (For example: fuel, lubricants, paint and

compressed air) is exempt from tax. Equipment and supplies, including soaps and cleaning compounds, brushes, brooms, mops and similar items, used in general cleaning and maintenance of farm property shall be subject to tax.

(iii) *Managerial, sales or other nonoperational activities.* Property used in managerial, sales or other nonoperational activities is not directly used in farming and, therefore, is subject to tax. This category includes but is not limited to property used in any of the following activities:

(A) *Farming management and administration.* Office furniture, supplies and equipment, textbooks and other educational materials, books and records, and other property used in farming, recordkeeping and other administrative and managerial work is subject to tax. The property includes, but is not limited to, supplies used to record the quality and quantity of work in production or goods in storage, the flow of work, the results of inspection or to instruct workers in routing work or other production activities.

(B) *Selling and marketing.* Property used in advertising farm products for sale, or in marketing, transporting the products to a market or to customers, or selling the products, is not within the scope of the farming exemption.

(C) *Exhibition of farm products.* Property used in the exhibition of farm products or of farming operations is subject to tax. The property includes blankets, halters, prods, leads, harnesses, dressing, ribbons, clipper and similar show grooming and display equipment.

(D) *Safety and fire prevention.* Property used to prevent or fight fires and equipment and supplies used for programs as safety, accident prevention or fire prevention is subject to tax, even though such equipment or property is required by law, except for drugs, medicines and medical supplies exempted by section 204(17) of the TRC (72 P. S. § 7204(17)).

(E) *Employe or personal use.* Property used for the personal comfort, convenience or use of the farmer, his family, his employes or persons associated with him is subject to tax. Examples of property include the following: beds, mattresses, blankets, tableware, stoves, refrigerators and other equipment used in conjunction with the operation of a migrant labor camp or facilities for farm employes. Protective equipment (such as face masks, helmets, gloves, coveralls, goggles, and the like), worn by farming personnel is exempt from tax.

(F) *Space heating, cooling, ventilation and illumination.* Property, including machinery, equipment, fuel or power used to ventilate buildings, lighting for general illumination or air conditioning and refrigeration, space heating and similar property, is subject to tax, unless its use is required in order to preserve the health of productive animals or to prevent spoilage of farm products, prior to package passing to the ultimate consumer.

(G) *Prefarming activities.* Property used to transport personnel or to collect, convey or transport property, and storage facilities or devices used to store property, prior to its use in the actual farming operation, is subject to tax.

(H) *Property used during farming operations.* Property used in managerial, sales or other nonfarming activities, is subject to tax even though it is used during farming operations. Illustrations of property include safety, heating and ventilation equipment, planking or grating for crosswalks or platforms, and maintenance equipment or facilities.

(I) *Postfarming activities.* Property used to transport or convey the farm product after the final farming operation which includes but does not extend beyond the operation of packaging for the ultimate consumer, and storage and refrigeration facilities or devices used to store the product, are not used directly in farming and shall be taxable. For example, equipment, which loads packaged products into cases or cartons for ease of handling in delivery shall be subject to tax. Machinery, equipment, supplies and other property used to convey, transport, handle or store the packaged product is also taxable.

(J) *Additional processing of farm products.* Property used in making butter, sausage, pasteurized milk, canned goods, jellies, flour, juices, cheeses, ice cream and other items which are not “farm products,” as defined in § 32.1 (relating to definitions), is not exempt from tax under the farming exemption.

(b) *Use of exemption certificate.* When a farmer purchases exempt property under this section, the farmer shall prepare and deliver to the vendor a properly executed exemption certificate.

#### Source

The provisions of this § 32.33 amended May 22, 1981, effective May 23, 1981, 11 Pa.B. 1806; amended July 1, 1983, effective July 2, 1983, 13 Pa.B. 2066; amended March 9, 1984, effective March 10, 1984, 14 Pa.B. 843. Immediately preceding text appears at serial pages (83011) to (83012), (61206) to (61207) and (83013) to (83016).

#### Cross References

This section cited in 61 Pa. Code § 32.1 (relating to definitions); 61 Pa. Code § 32.25 (relating to steam, gas, electricity, fuel oil and kerosene); 61 Pa. Code § 44.4 (relating to guns and ammunition); and 61 Pa. Code § 60.21 (relating to commercial racing activities).

### § 32.34. Public utilities.

(a) *Equipment, machinery, parts and foundations therefor, and supplies used directly in rendering public utility service.* The purchase or use by a public utility of tangible personal property or services performed thereon to be predominantly used directly by it in producing, delivering or rendering of a public utility service or constructing, reconstructing, remodeling, repairing or maintaining facilities

directly used in the service is exempt from tax, whether or not the facilities constitute real estate. However, for purposes of this exemption, real estate does not include buildings, roads or similar facilities. Effective March 4, 1971, foundations for exempt machinery or equipment became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations used to support equipment, machinery and parts used directly in rendering a public utility service are exempt from tax. The term “foundations” includes sand, gravel, crushed rock, concrete or similar material used as bedding or surrounding pipe used directly in rendering a public utility sanitary sewer or water service. Purchases of any vehicles required to be registered under 75 Pa.C.S. §§ 101—9909 (relating to Vehicle Code), except those vehicles used directly by a public utility engaged in business as a common carrier as well as supplies and repair parts for the vehicles, is subject to tax.

(1) *Direct use.* In determining whether a particular structure or article is used directly in producing, delivering or rendering a public utility service, consideration shall be given to the following:

(i) The physical proximity of the items while in use and the proximity of time of their use to the production, rendition and delivery of the utility service.

(ii) The causal relationship between the use of the item and the production, delivery and rendition of the utility service.

(iii) The character of the item, as to whether it is in the nature of a general improvement to the premises that would serve various users or is particularly designed or constructed for public utility use. The fact that particular property may be considered essential to the rendering of a public utility service because its use is required either by law or practical necessity does not, of itself, mean that the property is used directly by a public utility.

(2) *Property directly used; predominant use.* The purchase or use by a public utility of property in the following categories, when predominantly used directly in rendering a public utility service, shall be exempt from tax. Where a single unit of the property is put to use in two different activities, one of which is a direct use and the other of which is not, the property shall not be exempt from tax unless the public utility makes use of the property more than 50% of the time directly in public utility operations.

(i) *General.* Machinery, equipment, parts and foundations therefor, and supplies which are used in the actual producing, delivering, or rendering of a public utility service shall be considered to be directly used in public utility operations. Repair parts which are installed and become an integral part of the property is also exempt from tax.

(ii) *Pollution control devices.* Equipment, machinery and supplies designed and used to control, abate or prevent air, water or noise pollution generated in the rendering of the public utility services shall be deemed to be directly used in the rendition of a public utility service and, therefore, is

not subject to tax. In order for property to qualify as exempt pollution control devices, it shall not be necessary that the pollutants be recycled or used in any manner.

(iii) *Realty construction; materials, tools and equipment.* Construction materials, tools and equipment used to construct, reconstruct, remodel, repair or maintain facilities which are used directly in the production, delivery or rendition of a public utility service shall be deemed to be directly used and therefore shall be exempt from tax. However, tools and equipment used to maintain the facilities shall be exempt only if installed as a part of the facility.

(iv) *Research.* Property which is used directly in research activities by a public utility shall be exempt from tax, provided that the object of the research is the production of a new or improved product or utility service or method of producing a product or utility service. The exemption does not apply to property used in market research or in other research which is conducted with the objective of improving administrative efficiency.

(3) *Property not directly used.* Property in the following categories is not directly used in public utility operations and the purchase or use of the property is subject to tax:

(i) *Real estate.* Construction materials, tools and equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly in the production, delivery or rendition of a public utility service is subject to tax. The purchase or use of property for use in construction, reconstructing, remodeling, repairing or maintaining a building, road or similar facility, regardless of its purpose, is subject to tax. The term building does not include machinery and equipment and parts therefor, whether the property is designated as real estate or not. Structures such as railroad watchmen's shacks, bus terminals, warehouses and toolsheds are considered buildings. However, the machinery and equipment as signal towers, water and fuel tanks, and railroad tracks are not considered buildings.

(ii) *Maintenance; tools and equipment.* Tools and equipment used but not installed in the maintenance of facilities directly used in the production, delivery or rendition of a public utility service shall be subject to tax. Tools and equipment used in the maintenance of nonexempt facilities shall be subject to tax whether or not they are installed so as to become a component thereof.

(iii) *Managerial, sales or other nonoperational activities.* Property used in managerial, sales or other nonoperational activities is not directly used in the production, delivery or rendition of a public utility service and is therefore subject to tax. This category includes, but is not limited to, property used in any of the following activities:

(A) *Management and administration.* Office furniture, supplies and equipment, textbooks and other educational materials, books and records,

and other property used by a public utility in recordkeeping and other administrative and managerial work, irrespective of the point of use, is subject to tax. The property includes, but is not limited to, supplies used to record the quality and quantity of work in production or goods in storage, the flow of work, the results of inspection or to instruct workers in routing work or other production activities.

(B) *Selling and marketing.* Property used in advertising, marketing or selling public utility services or products is not within the scope of the public utility exemption.

(C) *Public utility exhibitions.* Property used in the exhibition of public utility products or services is subject to tax.

(D) *Safety and fire prevention.* Property used to prevent or fight fires and equipment and supplies used for programs as safety, accident prevention or fire prevention is subject to tax, even though the equipment or property is required by law, except for drugs, medicines and medical supplies exempted by section 204(17) of the TRC (72 P. S. § 7204(17)).

(E) *Employee use.* Property used for the personal comfort, convenience or use of employees, is subject to tax. Protective equipment, such as face masks, helmets, gloves, coveralls, goggles, and the like, worn by production personnel is exempt from tax.

(F) *Space heating, cooling, ventilation and illumination.* Property, including machinery and equipment, fuel or power used to ventilate buildings, lighting for general illumination, air conditioning and other space cooling, space heating and similar property, is subject to tax unless it is established that the use of the property bears an active causal relationship to the production, delivery or rendition of a public utility service.

(G) *Activities prior to production, delivery or rendition of services.* Property used to transport personnel or to collect, convey or transport other property, and storage facilities or devices used to store or hold property prior to its use in the production, delivery or rendition of a public utility service is subject to tax. Property used to transport, store or hold the actual product which is delivered as a public utility service is directly used and therefore is not subject to tax.

(H) *Property used during production, delivery or rendition of services.* Property used in managerial, sales or other nonoperational activities is subject to tax even though it is used during the production operation. Illustrations of the property include safety, heating and ventilation equipment, and planking or grating for crosswalks or platforms.

(I) *Activities subsequent to production, delivery or rendition of services.* Property used to transport or convey personnel or property following the production, delivery or rendition of a public utility service and storage facilities or devices used for that purpose, are not used directly by a public utility and is subject to tax.

(J) *Waste disposal.* Property used in waste handling and disposal of pollutants is not deemed to be directly used and is subject to tax unless the property qualifies for exemption under subsection (a)(2)(ii). For purposes of this subsection, ash handling equipment used by a public utility electrical generation station is not considered as property used in waste disposal.

(b) *Use of exemption certificates.* When a public utility purchases exempt property under this section, the public utility shall prepare and deliver to the vendor a properly executed exemption certificate.

#### Source

The provisions of this § 32.34 amended April 15, 1977, effective April 16, 1977, 7 Pa.B. 1046; amended August 14, 1981, effective August 15, 1981, 11 Pa.B. 2855; amended March 9, 1984, effective March 10, 1984, 14 Pa.B. 843; corrected January 7, 2005, effective December 1, 1990, 35 Pa.B. 256. Immediately preceding text appears at serial pages (233339), to (233340), (215857) to (215858) and (234297).

#### Notes of Decisions

##### *Direct Use Not Established*

Food, nonalcoholic beverages and related nonfood supplies furnished by airliner to passengers and crew members during commercial flights are not “directly used” in the supply of a public utility service and do not qualify for an exclusion under the “use tax” provisions in accordance with 72 P. S. § 7201(o). *American Airlines v. Board of Finance and Revenue*, 665 A.2d 417 (Pa. 1995).

Food, nonalcoholic beverages and related nonfood supplies furnished to passengers and crew members during flight are directly used in the rendition of a public utility service and are, therefore, exempt from use tax. *USAir, Inc. v. Commonwealth*, 629 A.2d 300 (Pa. Cmwlth. 1993).

##### *Documentation*

Taxpayer insisted that the company leased its equipment to other Public Utility Commission entities for use in public utility service, and that such leases would be found in the boxes of documents. However, the taxpayer was unable to identify which boxes, among the many piled in the back of the courtroom, contained these leases and after allowing the taxpayer time to select several boxes as possible sites for these leases and marking these boxes for identification, no leases were identified in the subsequent inventory. Therefore, the taxpayer failed to prove that the assessed equipment was leased to a Commission licensed entity. *Fiore v. Commonwealth*, 668 A.2d 1210 (Pa. Cmwlth. 1995).

##### *Evidence Supporting Exemption*

In order for a taxpayer to prove an entitlement to an exemption from use tax, a taxpayer must establish that the entity using the assessed items of property has public utility authority, and that the assessed items of property were directly and predominantly used in the rendition of a public utility service, or in manufacturing. In the case of those vehicles required to be registered under the Vehicle Code, a taxpayer must prove an entitlement to an exemption by showing that the vehicles were directly used by a business with common carrier authority. *Fiore v. Commonwealth*, 668 A.2d 1210 (Pa. Cmwlth. 1995).

#### Cross References

This section cited in 61 Pa. Code § 32.25 (relating to steam, gas, electricity, fuel oil and kerosene); and 61 Pa. Code § 60.20 (relating to telecommunications service).

**§ 32.35. Mining.**

(a) *Equipment, machinery, parts and foundations therefor and supplies used directly in mining.* The purchase or use of tangible personal property or services performed thereon by a person engaged in the business of mining is exempt from tax if the property is predominantly used directly by the person in mining operations. Purchases of a vehicle required to be registered under 75 Pa.C. S. §§ 101—9909 (relating to Vehicle Code), as well as supplies and repair parts for the vehicles is subject to tax. There is no exemption for maintenance facilities or for materials or supplies to be used or consumed in construction, reconstruction or remodeling of real estate other than machinery, equipment and parts therefor that may be affixed to the real estate. Beginning March 4, 1971, foundations for equipment and machinery became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations used to support equipment, machinery and parts used directly in mining are exempt from tax.

(1) *Direct use.* In determining whether property is directly used, consideration shall be given to the following factors:

(i) The physical proximity of the property in question to the production process in which it is used.

(ii) The proximity of the time of use of the property in question to production processes which precede and follow its use.

(iii) The active causal relationship between the use of the property in question and the production of the mined product. The fact that particular property may be considered essential to the conduct of the business of mining because its use is required either by law or practical necessity does not, of itself, mean that the property is used directly in mining operations.

(2) *Property directly used; predominant use.* The purchase or use by a mine operator of property in the following categories, when predominantly used directly in mining, is exempt from tax. Where a single unit of the property is put to use in two different activities, one of which is a direct use and the other of which is not, the property is not exempt from tax unless the mine operator makes use of the property more than 50% of the time directly in mining operations.

(i) *General.* Machinery, equipment, parts and foundations therefor, and supplies which are used in the actual mining production, to transport or convey the product or production personnel, or to handle or store the product during the production are considered to be directly used in mining operations. Repair parts which are installed and become an integral part of the property are also exempt from tax. Exempt property includes:

(A) Digging and extracting equipment, machinery and tools, such as power coal cutting machines, picks, sledges and shovels, and earthmoving equipment and machinery used to remove the overburden in strip mining.

(B) Blasting and dislodging equipment and supplies, such as air compressors, compressed air tubes and dynamite or other explosives.

(C) Drainage pumps, pipes, valves, fittings and packing.

(D) Timber (props), roof-bolts and roof-bolting machines and their accessories, roof jacks, torque wrenches and impact tools used to test roof bolts and make them secure.

(E) Rock dust and rock-dusting equipment.

(F) Trolley and mine telephones used predominantly in mining activities, other than for managerial direction and supervision, such as for dispatching purposes on mine railways and work coordination among production employees of equal authority.

(G) Ventilation equipment used to extract impure air from the mine and extend production operations to the mine face.

(H) Transportation devices and equipment used to haul the extracted product from the mine face or pit to the preparation plant, tippie or breaker, except vehicles required to be registered under the Vehicle Code.

(I) Lighting equipment and supplies used to light production activities.

(J) Protective devices worn by production personnel in their work, such as miners' lamps and respirators.

(K) Preparation plant machinery and equipment.

(L) Waste extraction and removal equipment and machinery used in the course of production operations.

(M) Water well drilling rigs, bits, drills, casings, casing covers and lubricants.

(N) Machinery and equipment—such as dozers and graders—and materials—such as fill, seedlings, grass seed, shrubs, stone, concrete and soil nutrients—used in backfilling and reclamation of underground shafts, stripping pits and other directly used mining facilities when required by law.

(ii) *Pollution control devices.* Equipment, machinery and supplies, designed and used to control, abate or prevent air, water or noise pollution generated in the mining operation are deemed to be directly used in mining and, therefore, is not subject to tax. In order for property to qualify as exempt pollution control devices, it is not necessary that the pollutants be recycled or used in any manner.

(iii) *Testing and inspection.* Property used to test and inspect the product during actual mine production is considered to be directly used in the mining operation.

(iv) *Cleaning of returnable containers.* Property used to wash, sterilize or inspect returnable containers prior to their being filled shall be exempt when used in packaging the product if the container will be delivered to the ultimate consumer.

(v) *Packaging.* Wrapping equipment and supplies, including internal packing materials and returnable containers, used in packaging which passes to the ultimate consumer are directly used and therefore shall be exempt.

(vi) *Research.* Property which is used directly in research activities is exempt from tax, provided that the object of the research is the production of a new or improved product or method of producing a product. The exemption does not apply to property used in market research or in other research which is conducted with the objective of improving administrative efficiency.

(3) *Property not directly used.* Property in the following categories is not used directly in mining operation, and the purchase or use of the property is subject to tax.

(i) *Real estate.* The term mining does not include the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate. The purchase or use of tangible personal property by a miner for such purpose shall be subject to tax, even though the structure may house or otherwise contain equipment or other facilities used directly in mining. Equipment, machinery, tools and other property used in logging and timbering activities including property used to remove trees and clear ground preparatory to extraction activities is not deemed to be directly used.

(ii) *Maintenance facilities.* Maintenance, service and repair work is not a mining operation. Maintenance facilities either underground or surface, including tools, equipment and supplies predominantly used in performing the work (For example: chain hoists, tire spreaders, welding equipment, welding oxygen and acetylene, drills, sanders, wrenches, paint brushes and sprayers, oilers, absorbent compounds, dusting compounds, air blowers and wipers) is subject to tax. However, replacement parts which are used to replace worn parts upon exempt machinery and equipment (For example: motors, belts, screws, bolts, cutting edges, air filters or gears) and operation supplies which are actively and continuously used in the operation of exempt machinery and equipment (For example: fuel, lubricants, paint and compressed air) is exempt from tax. Equipment and supplies, including soaps and cleaning compounds, brushes, brooms, mops and similar items, used in general cleaning and maintenance of mining property is subject to tax.

(iii) *Managerial, sales or other nonoperational activities.* Property used in managerial, sales or other nonoperational activities is not directly used in mining and therefore shall be subject to tax. This category includes but is not limited to property used in any of the following activities:

(A) *Mine management and administration.* Office furniture, supplies and equipment, textbooks and other educational materials, books and records, and other property used in mining recordkeeping and other administrative and managerial work shall be subject to tax. The property includes, but is not limited to supplies used to record the quality and quan-

tity of work in production or goods in storage, the flow of work, the results of inspection, or to instruct workers in routing work, or other production activities.

(B) *Selling and marketing.* Property used in advertising mining products for sale, or in marketing, transporting the products to a market or to customers or selling the products, is not within the scope of the mining exemption.

(C) *Exhibition of mine products.* Property used in the exhibition of mining products or of mining operations is subject to tax.

(D) *Safety and fire prevention.* Property used to prevent or fight fires and equipment and supplies used for the programs as safety, accident prevention or fire prevention shall be subject to tax, even though the equipment or property is required by law.

(E) *Employe use.* Property used for the personal comfort, convenience or use of employes shall be subject to tax. Property used in bath houses and lamphouses is included in this category. However, protective equipment, such as face masks, helmets, gloves, coveralls, goggles and the like, worn by production personnel is exempt from tax.

(F) *Space heating, cooling, ventilation and illumination.* Property, including machinery, equipment, fuel or power used to ventilate buildings, lighting for general illumination or air conditioning and other space cooling, space heating and similar property, is subject to tax, unless it is established that the use of the property bears an active causal relationship to the mining operation.

(G) *Premining activities.* Property used to transport personnel or to collect, convey or transport other property, and storage facilities or devices used to store the property, prior to the actual mining operation is subject to tax.

(H) *Property used during mining operation.* Property used in managerial, sales or other nonmining activities, is subject to tax even though it is used during mining operations. Illustrations of the property include safety, heating and ventilation equipment; planking or grating for crosswalks or platforms; and maintenance equipment or facilities.

(I) *Post-mining activities.* Property used to transport or convey the mined product after the final mining operation, which includes but does not extend beyond the operation of packaging for the ultimate consumer, and storage facilities or devices used to store the product, are not used directly in mining and is taxable. For example, equipment which loads packaged products into cases or cartons for ease of handling in delivery is subject to tax. Machinery, equipment, supplies and other property used to convey, transport, handle or store the packaged product are also taxable.

(J) *Waste disposal.* Property used for waste handling and disposal of pollutants other than in the course of production operations is not deemed to be directly used and is subject to tax unless the property qualifies for an exemption under subsection (a)(2)(ii).

(b) *Use of exemption certificate.* When a miner purchases exempt property under this section, the miner shall prepare and deliver to the vendor a properly executed exemption certificate.

#### Source

The provisions of this § 32.35 amended April 15, 1977, effective April 16, 1977, 7 Pa.B. 1047; amended August 21, 1981, effective August 22, 1981, 11 Pa.B. 2912; amended July 1, 1983, effective July 2, 1983, 13 Pa.B. 2066; amended March 9, 1984, effective March 10, 1984, 14 Pa.B. 843. Immediately preceding text appears at serial pages (83018), (63094) to (63095) and (83019) to (83020).

#### Notes of Decisions

##### *Mining*

The equipment used by a hard rock extractor in making possible the access to and extraction of bituminous coal is involved in mining for purposes of the sales and use tax exclusion. *Commonwealth v. R. G. Johnson Company*, 433 A.2d 465 (Pa. 1981).

##### *Residential Use*

Purchase of utilities on behalf of tenants and included in the tenants' monthly rental fee does not constitute a "residential use," and landlords are not entitled to a refund for taxes paid. *Adelphia House Partnership v. Commonwealth*, 709 A.2d 967 (Pa. Cmwlth. 1998).

#### Cross References

This section cited in 61 Pa. Code § 32.25 (relating to steam, gas, electricity, fuel oil and kerosene).

### § 32.36. Printing and related businesses.

(a) *The printing exemption.* Printing and related businesses are exempt from sales and use taxes in accordance with the following:

(1) *Machinery, equipment, parts and supplies used directly in printing.* Printing, when engaged in as a business, is included in manufacturing under the TRC and regulations applicable to manufacturers are also applicable to printers. Equipment, machinery—including components of a computer system, accessories, parts and supplies therefor which are used predominantly and directly in the business of printing, regardless of the technology involved, is exempt from tax. Where equipment is used for both exempt and nonexempt purposes, the predominant use test shall determine its tax status. Effective February 7, 1981, foundations used to support equipment, machinery and parts used directly in printing are exempt from tax. See § 32.32 (relating to manufacturing; processing). With the exception of purchases involving improvements to real estate, directly used property may be purchased free of tax upon the presentation to a vendor of a properly executed exemption certificate certifying that the purchase will be directly used in printing—manufacturing. For example, company X has a computer printer and photocopy machine which predominantly supports administrative operations. Neither device qualifies for the printing exemption. Company Y has a print shop operated as a separate profit-center reproducing multiple copies of substantially identical printed matter. The tangible personal property in this print shop which is predominantly used in printing qualifies for the sales tax exemption.

(2) *Related businesses.* The exemption also applies to businesses related to the printing industry which, although they themselves are not printing, are “manufacturing” within the meaning of section 201(c) of the TRC (72 P. S. § 7201(c)) and thus are not subject to the multiple copy requirement. Businesses include trade binding, engraving, silk screening, typography, including advertising typographers, plate making, color separating, stereotyping, electrotyping, gravure cylinder making, photographic processing and the business of manufacturing page mechanicals, camera ready copy, image carriers or related or component items for sale to printers for use in their printing operations.

(3) *Materials incorporated as components into printed matter.* The purchase of personal property which will be physically incorporated by the printer as an ingredient or constituent of printed matter and which will be sold in the regular course of business is a purchase for resale. These materials may be purchased by the printer free of tax upon presentation to the vendor of a properly executed exemption certificate certifying that the purchase is for resale.

(4) *Inhouse printing.* Where the normal business of an entity is other than the business of printing, but the entity also provides its own full service printing requirements, an inhouse printing operation will qualify for the manufacturing exemption if the following apply:

(i) Inhouse printing is to be conducted in a separate and distinct location, utilizing separate and distinct machinery and supplies, devoted predominantly to printing activities.

(ii) Inhouse printing is the responsibility of employees assigned to the job of inhouse printing and whose duties are predominately related to printing activities.

(iii) Separate accounting or interdepartmental billing is provided to reflect the cost of operating inhouse printing activities and to charge these costs against other business activities conducted by the taxpayer.

(iv) Inhouse printing activities are separate and distinct from other business activities and are not an integrated part of general data processing, word processing, copying or other business activity of the taxpayer.

(v) Inhouse printing activities are of sufficient size, scope and character that they could be conducted on a commercially viable basis separate and distinct from other business activities of the taxpayer.

(b) *Sales by printer.* Sales by printers shall conform with the following:

(1) *Generally.* Tax shall be collected by a printer upon the sale at retail of taxable printed matter. See § 31.29 (relating to books, printed matter and advertising materials). The tax applies to the charge for printing services.

(2) *Printed matter not qualifying as direct mail advertising literature or materials or mail order catalogs.* Generally, printers include as an element of the purchase price to customers’ charges for service or labor pertaining to the printing or preparing of the printed matter. Charges for printing, imprinting, engraving, mimeographing, multigraphing, typesetting, addressing, folding,

enclosing, packaging and selling are included in the purchase price, and tax shall be collected with respect to charges. Charges, even though separately stated, made by the printer for the mailing or delivering of the finished product to the customer, or a designee, are included as an element of the purchase price. When the finished product involves the use of the United States postal cards or stamped envelopes purchased by the printer, the tax does not apply to the amount of the United States postage imprinted upon the postal card or envelopes if the printer is not required to mail the printed matter to the customer's designee. If the printer is required to mail the printed matter to the customer's designee, the value of the postage is taxable upon the basis that it constitutes a charge for the delivery of the postal cards or stamped envelopes. A charge for tear sheets, clippings, reprints and extra proofs is subject to tax.

*Example 1:* Printer "A" imprints stamped envelopes and brochures not qualifying as direct mail advertising literature or material for his customer "B." "A" furnishes stamped envelopes and paper for the brochures. The contract requires "A" to return the completed envelopes and brochures to "B" who in turn will mail them to his customers. "A" is required to collect sales tax upon his services for the envelopes, paper, printing charges and cost of delivering the envelopes and brochures to "B." "A" may separately state the costs of the postage stamps which are not subject to tax.

*Example 2:* Printer "A" imprints stamped envelopes and brochures not qualifying as direct mail advertising materials or literature for customer "B." "A" furnishes the stamped envelopes and paper for the brochures. The contract requires "A" to mail the envelopes and brochures to "B's" customers. "A" is required to collect sales tax upon charges for the envelopes, paper, printing charges and stamps. The value of the stamps represents the delivery charges in conjunction with the sale.

(3) *Printed matter qualifying as direct mail advertising materials or mail order catalogs.* A charge for the sale of mail order catalogs and direct mail advertising literature or materials is exempt from tax. A charge incidental to the sale of mail order catalogs and direct mail advertising is also exempt from tax. A charge for the delivery postage or mailing of the items to the customer or the customer's designee is also exempt from tax.

(4) *Printing services.*

(i) The exemption relating to the purchase of direct mail advertising literature or materials and mail order catalogs is confined to transactions in which the printer provides both the printing service and the material to be imprinted. If the printer performs printing services upon paper, cardboard or other material furnished by the purchaser of the services or a third party, the charges are subject to tax even though the finished product qualifies as direct mail advertising literature or material or mail order catalog.

*Example:* Printer "A" imprints paper for customer "X." "X" supplies the paper. The letters are advertisements which will be mailed directly to "X's"

customers. This printing service does not qualify for the direct mail advertising exemption. Accordingly, “A” shall collect and “X” pay sales tax on the total purchase price of the printing service.

(ii) Copy, artwork, photographs, plates, separations and other preparations and image carriers are items which, if provided by the customer, will not cause a charge for printing to be taxable, if the customer does not also supply the material receiving the printing image.

*Example:* Printer “A” imprints paper for customer “Y.” “A” supplies the paper. “Y” supplies the plates and artwork. The letters are intended to promote business and will be mailed directly to “Y’s” customers. This material does qualify for the direct mail advertising exemption. “Y” is exempt from tax on the charges by “A.”

#### Source

The provisions of this § 32.36 amended through June 28, 1985, effective June 29, 1985, 15 Pa.B. 2389; amended March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322. Immediately preceding text appears at serial pages (149607) to (149608), (152595) to (152596) and (149611).

#### Notes of Decisions

Charges for independent vendor printing taxpayer’s publications were exempt from the use tax under the “direct mail advertising” exemption; the court construed the term “direct” in the direct mail advertising exemption to apply not only to advertising materials mailed by the taxpayer directly to prospective purchasers, but also to materials mailed by the vendor that reaches recipients directly following deposit in the mail. *Merion Publications, Inc. v Commonwealth*, 890 A.2d 436, 443 (Pa. Cmwlth. 2006).

Where outside printer was contracted to perform printing on taxpayer’s premises using printer’s own equipment and employees to perform the printing, taxpayer could not claim sales tax exemption for in-house printing. *SEI Investments v. Commonwealth*, 890 A.2d 1130, 1137 (Pa. Cmwlth. 2006).

Engineering supplies used by corporation did not qualify for printing exemption to use tax since corporation limited preparation of prints and drawings was solely in connection with manufacture of dies. *Oberg Manufacturing Co., Inc. v. Commonwealth*, 486 A.2d 1047 (Pa. Cmwlth. 1985).

A manufacturer of electrical products whose inhouse printing operation produces sales brochures, manuals, and reports for use by its own sales personnel, as well as stationery, books, pricing information, buying data, business forms and meter paper for its own electrical products, is engaged in printing as a business with respect to all materials used or consumed by its inhouse printing operation, but not with respect to items printed by outside independent printers. *Westinghouse Electric Corporation v. Board of Finance and Revenue*, 417 A.2d 800 (Pa. Cmwlth. 1980).

#### Cross References

This section cited in 61 Pa. Code § 32.25 (relating to steam, gas, electricity, fuel oil and kerosene); and 61 Pa. Code § 60.8 (relating to secretarial and editing services).

### § 32.37. Photographers and photofinishers.

(a) *Scope.* Photographers, photofinishers and photo-refinishers are vendors of photographs, materials and services purchased by their customers, whether or not produced to the special order of the customer. The photographer or photofinisher shall collect and remit tax upon the total purchase price charged for the photographs or services, even though the customer may furnish some of the materials. Photo-refinishers shall collect and remit tax upon the total purchase price charged for the rendering of the photo-refinishing service. In determining total purchase

price, there may be no deduction for ancillary expenses, including travel time and expenses, telephone calls, salaries or wages paid to assistants, models or narrators, whether or not the expenses are separately stated in billings to purchasers.

(b) *Manufacturing exemption.* The purchase or use of materials, equipment and supplies by a photographer or photofinisher is exempt from tax if the property is predominantly used directly by him in the photography or photofinishing operation. This exemption is restricted to photographers and photo-finishers and is not available to photo-refinishers.

(1) *Property directly used.* The following are examples of equipment, parts and accessories, and materials and supplies which when predominantly used directly by a photographer or photofinisher in the operation of photography shall be exempt from tax: cameras, film, camera or flash batteries, processing chemicals, special lighting, tripods, filters, cable release mechanisms, light measuring devices, screens, props, proofing machines, enlargers, developing trays, fixing trays, film and print washing machines, brushes and color crayons, densitometers, enlarging meters and automatic rocker trays.

(2) *Property not directly used.* The following are examples of equipment, materials and supplies which do not qualify for the manufacturing exemption: camera cases, gadget bags, lens cases, projectors, screens, projection lamps, projection tables, stands, slide files, motion picture reels and cans, viewers, viewing tables, negative files, negative envelopes, bulk film loaders, film cassettes, paper safes and cleaners for film and lenses.

(3) *Repairs.* The repair of equipment predominantly used directly by the photographer or photofinisher in his photography or photofinishing operation shall be exempt from tax. This exemption also applies to the purchase of replacement parts for the equipment.

(4) *Utilities.* That portion of the photographers or photofinishers utilities which are directly used in his manufacturing operations shall also be exempt from tax. Fuel or power used to ventilate buildings, for general illumination lighting, air conditioning and other space cooling, and space heating shall be subject to tax unless it is established that the use of these utilities bears an active causal relationship to the photographers or photofinishers manufacturing operations.

(c) *Resale exemption.* Photographers, photofinishers and photo-refinishers may claim the resale exemption on purchases of tangible personal property which they directly resell or incorporate into products which they resell.

#### Source

The provisions of this § 32.37 adopted April 26, 1974, effective April 27, 1974, 4 Pa.B. 828; amended June 29, 1990, effective June 30, 1990, 20 Pa.B. 3600. Immediately preceding text appears at serial pages (99666) and (105779).

#### Cross References

This section cited in 61 Pa. Code § 32.25 (relating to steam, gas, electricity, fuel oil and kerosene).

**§ 32.38. [Reserved].**

**Source**

The provisions of this § 32.38 adopted July 7, 2000, effective July 8, 2000, 30 Pa.B. 3459; reserved March 7, 2008, effective March 8, 2008, 38 Pa.B. 1148. Immediately preceding text appears at serial pages (267695) to (267697).

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