

# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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ETA 3119.2009

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## **Manufacturers' Machinery and Equipment Exemption — Pollution Control Equipment**

The Department has issued a series of excise tax advisories (ETAs) to address questions regarding the retail sales and use tax exemption provided by RCW 82.08.02565 and 82.12.02565, commonly referred to as the manufacturers' machinery and equipment exemption (M&E exemption). This ETA is issued to address the application of the M&E exemption to pollution control equipment. Please refer to ETA 3117.2009 for a current list of the issues covered by this series.

In addition to the issues discussed in this ETA series, machinery and equipment must also meet the other requirements of the statutes to be eligible for the exemption. For example, some of the requirements include:

- Purchaser/User must be a manufacturer, processor for hire, or a tester for a manufacturer or processor for hire,
- Must purchase machinery or equipment (devices, industrial fixtures, support facilities, pollution control equipment),
- The machinery or equipment must be used directly in a manufacturing, research and development, or testing operation,
- The machinery or equipment must have a useful life of one year or more, and
- The machinery or equipment must be used more than 50% of the time on an eligible activity.

Therefore, readers are advised that RCW 82.08.02565, RCW 82.12.02565, and WAC 458-20-13601 should also be referenced when making determinations about taxability.

The M&E exemption specifically includes pollution control equipment within the definition of machinery and equipment. Pollution is described in the statute as "air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation."

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Questions have been raised regarding:

- (1) The meaning of the word “contamination”;
- (2) Whether any weight is given to mandatory requirements for the installation of equipment;
- (3) Whether pollution prevention is limited to protecting the outside environment or does it includes spills and releases within the work place; and
- (4) Whether thermal pollution and noise control are covered by the exemption.

### ***Contamination***

It is an established rule of statutory interpretation that words in a statute are given their ordinary and common meaning and that courts and others may resort to dictionaries to determine the meaning of statutory language. Based on common dictionary definitions the term “contamination” means impurity or degradation caused by contact with a substance. The word “contamination” typically addresses alteration of physical, chemical, or biological properties. Examples of contamination are radiation or chemical spills. Contaminants can be substances that are liquid, gaseous, or solid. The term “contamination,” as used in the M&E exemption, does not include types of pollution that do not result in a degraded substance.

### ***Permits and Other Operating Requirements – Presumption***

The M&E exemption does not condition eligibility for “pollution control equipment” on the presence of a permit. However, the Department will presume that if pollution control equipment is required by permit or law it is eligible for the M&E exemption if all other conditions of the exemption are satisfied. If the Department finds that the use of the equipment does not meet a used directly test, or conflicts with other requirements or restrictions of the statute, the equipment is not entitled to the exemption. For example, manufacturing operations that produce dust might be required to perform portions of their operations within a building. While machinery and equipment that is used for dust control, such as water trucks used to keep an area wet, may be eligible, the building is not eligible because buildings are specifically excluded from the M&E exemption.

### ***Control at the Worksite***

The M&E exemption requires that the pollution control equipment must be used “to prevent air pollution, water pollution, or contamination that *might otherwise result* from the manufacturing operation, testing operation, or research and development operation.” The inclusion of “pollution prevention” in the statute is aimed at protecting the public interest in reducing environmental hazards. The phrase “might otherwise result...from the operation” refers to deleterious wastes and releases that result from the processes of the operation.

The M&E exemption for pollution control equipment may not be used to exempt tax on machinery and equipment used to clean raw materials. The pollution control equipment must be used to capture wastes and contain or prevent releases resulting from processes of the operation. Property used to clean raw materials at the site is not considered “pollution control equipment.” Such property is eligible for the M&E exemption if it meets one of the used directly criteria.

***Thermal Pollution***

Thermal pollution of water, typically caused by the discharge or release of water used in the manufacturing operation as a cooling agent, qualifies as “water pollution.” Thermally polluted water undergoes changes that impact its use as a resource by other consumers (e.g. industrial diversions, drinking water, recreation) and other biological organisms. Therefore, machinery and equipment used directly to prevent thermal pollution of water is eligible for the M&E exemption.

***Noise Control***

Noise control machinery and equipment is not eligible for the M&E exemption. Noise is not a contaminant, nor is it within the scope of air or water pollution.

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