



## The Purchase Of A Machine To Be Used In The Production Of A New Consumer Product

**LR: 2012-3-SUT – Issued June 22, 2012**  
**Tax: Sales and Use Tax**

Taxpayer requested a Letter Ruling regarding the application of the New Jersey Sales and Use Tax Act to the purchase of a machine to be used in the production of a new consumer product.

### **Facts**

The machine will be used in the production of a product which will be sold to the consumer. The product is a 1 inch by 1 ½ inch ingestible dietary supplement used to provide energy to the consumer ("energy strip"). Each energy strip will be packaged individually inside of a foil pouch and sold to the consumer as a "4 count sleeve". The 4 count sleeve will consist of 4 pouches and 1 promotional insert card inside of a paper sleeve.

The machine will be used by Taxpayer to assemble the 4 foil pouches together with the 1 insert card, mechanically wrap and glue the paper sleeve around the pouches, and imprint a lot code and expiration date onto the paper sleeve which corresponds to the lot code and expiration date of the pouches, to create the final product which will be sold to the consumer. The product will only be sold as a 4 count sleeve and will not be available for sale as individual foil pouches.

### **Issue**

Whether the purchase of a machine used in the production of a consumer product is subject to Sales and Use Tax.

### **Discussion**

The Sales and Use Tax Act provides an exemption for sales of machinery, apparatus or equipment for use directly and primarily in the production of tangible property by manufacturing, processing, assembling or refining. N.J.S.A. 54:32B-8.13(a). N.J.A.C.18:24-4.2 defines "machinery, apparatus, or equipment" as "any complex, mechanical, electrical, or electronic device, mechanism or instrument which is adapted to the accomplishment of a production process, and which is designed to be used, and is used, in manufacturing, converting, processing, fabricating, assembling, or refining tangible personal property for sale." Equipment is deemed to be used "directly" in the production process only when it is used to initiate, sustain or terminate the process of transforming raw materials into finished products. N.J.A.C. 18:24-4.4(c).

According to N.J.A.C. 18:24-4.4(b), "production is limited to those operations commencing with the introduction of raw materials into a systematic series of manufacturing, processing, assembling, or refining operations, and ceased when the product is in the form in which it will be sold to the ultimate consumer..." Thus, production begins with the introduction of raw materials into the process and ceases when the product is in the form in which it will be sold to the ultimate consumer. At this point, the equipment will no longer be considered to be used in "production."

In order to document the exemption provided by [N.J.S.A. 54:32B-8.13\(a\)](#), a fully completed Exempt Use Certificate ([Form ST-4](#)) or the Streamlined Certificate of Exemption ([Form STSST](#)) must be provided by the purchaser.

### **Conclusion**

Since the product will only be sold as a 4 count sleeve and will not be available as individual foil pouches, the machine is used to assemble the product pouches into the form in which it will be purchased by the ultimate consumer. Therefore, the machine qualifies for the [N.J.S.A. 54:32B-8.13\(a\)](#) exemption.

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A Letter Ruling is limited to the facts set forth therein and is binding on the Division of Taxation only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. A Letter Ruling is based on the law, regulations, and Division policies in effect as of the date the Letter Ruling is issued or for the specific time period at issue in the Letter Ruling.