



# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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## **Manufacturers' Machinery and Equipment Exemption — Design and Product Development**

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 design and product development. 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.

Questions have been raised regarding whether machinery and equipment used for design and product development purposes is eligible for the M&E exemption. In terms of manufacturers engaging in research and development, this ETA only addresses "design" that is not "research and development" as that term is used in chapter 82.63 RCW.

**All ETAs were cancelled on February 2, 2009 and those which had a continued use were rewritten and reissued using a new numbering system. The new ETAs are numbered using the following format 3nnn.yyyy. The Department of Revenue issued ETA 3001.2009 which includes a cross reference table showing the old and new ETA numbers for those ETAs that were rewritten.**

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Please direct comments to:  
Department of Revenue  
Interpretation and Technical Advice  
Division  
P O Box 47453  
Olympia, Washington 98504-7453  
(360) 570.6124 eta@DOR.wa.gov

### ***Manufacturing operation***

The manufacturers' machinery and equipment exemption is directed toward activity that takes place from the point where raw materials enter the manufacturing site to the point where processed materials leave the manufacturing site. This range of activity is referred to in the M&E statute as the "manufacturing operation." Design is an activity that precedes or is separate from actual manufacturing and is not part of the "manufacturing operation," as that phrase is defined in the M&E statute. Design includes engineering, and other analytical and creative work.

The Department makes a distinction between activities that take place within the manufacturing operation and activities that either precede or follow the manufacturing operation. For example, creation and design of information, such as writing text for a newspaper, is an activity that takes place before the manufacturing operation begins. However, the preparation of this information for use in a manufactured product, is an activity that generally occurs in the manufacturing operation. Composition of a book or the writing of a newspaper article are activities that are considered product development and outside of the manufacturing operation, and thus are not considered to be within the scope of the M&E exemption. Similarly, design of an automobile, or engineering of a piston are considered product development and outside of the manufacturing operation. However, taking a completed manuscript and preparing it for printing could be part of the manufacturing operation, as could be the layout and pagination of a newspaper. Other products that have information content, such as compact discs and music are subject to the same tax application. Essentially, the creation of the information is not manufacturing and is not part of the manufacturing operation. Property that is used both in product development and in manufacturing of tangible personal property may be eligible for the M&E exemption, if all other requirements of the exemption are met.

While machinery and equipment primarily used in design and product development does not qualify for the M&E exemption, a sales and use tax exemption is available for computer equipment used by a "printer or publisher," as defined in RCW 82.08.806, primarily in the printing or publishing of any printed material. This exemption is effective June 10, 2004, and it also includes repair parts and replacement parts for such equipment, as well as sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such equipment. Refer to RCW 82.08.806 and 82.12.806 for additional information about this exemption.

Also, refer to RCW 82.08.975 and 82.12.975 for additional information about the commercial aerospace manufacturing industry computer equipment exemption on development, design, and engineering activities.

### ***Presumption***

The Department will presume that design activity is not part of the manufacturing operation and machinery and equipment used in design is not eligible for the M&E exemption. Equipment used in redesign or refinement of a product after manufacturing has begun is not eligible for the M&E exemption. This presumption can be overcome by showing that the design decisions and the application of labor and skills to the raw materials are the same activity.

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