

DEPARTMENT OF STATE REVENUE

Information Bulletin #88
Sales Tax
July 2018
Effective Date: July 1, 2018

SUBJECT: Application of Sales Tax to Asphalt and Concrete Manufacturers

REFERENCES: [IC 6-2.5-1-14.7](#); [IC 6-2.5-1-27.7](#); [IC 6-2.5-3-2](#); [IC 6-2.5-3-3](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-9](#); [IC 6-2.5-5-3](#) through [IC 6-2.5-5-6](#); [IC 6-2.5-5-52](#); [45 IAC 2.2-3-7](#) through [45 IAC 2.2-3-12](#); [45 IAC 2.2-4-21](#) through [45 IAC 2.2-4-26](#).

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I. INTRODUCTION

Prior to November 2017, Sales Tax Information Bulletin #60 included a section that provided that "hot mix asphalt" manufacturers were entitled to the manufacturing exemption for their purchases of machinery, tools, and equipment directly used in the direct production of other tangible personal property, including dump trucks, pavers, and other machinery. This section was removed from Sales Tax Information Bulletin #60 when it was updated in November 2017. However, effective July 1, 2018, House Enrolled Act 1242(ss) creates a new statutory exemption for operators of "hot mix asphalt" plants that applies to their purchases of plant equipment used directly in the direct production of their hot mix asphalt, as well the operator's purchases of specific machinery used to transport or pave the asphalt, as explained below.

The purpose of this Bulletin is to describe how this new statutory exemption applies, as well as how the separate manufacturing exemptions might apply to manufacturers of concrete and other types of asphalt that are also construction contractors.

II. EXEMPTION FOR HOT MIX ASPHALT PLANT OPERATORS

A person that operates a hot mix asphalt manufacturing plant is entitled to an exemption from sales and use taxes for plant equipment directly used in the direct production of hot mix asphalt. Additionally, a person that operates a hot mix asphalt manufacturing plant may also purchase dump trucks used to transport "hot mix asphalt" from their asphalt plant to the job site, and pavers used to spread the person's hot mix asphalt, exempt from sales and use tax. The exemption extends to repair parts installed on trucks, pavers, or equipment described in this section, and to fuel for the respective equipment as well.

The exemption is not applicable for the following purchases made by a person that operates a hot mix asphalt manufacturing plant:

- Dump trucks which are used to haul "raw materials"
- Graders
- Rollers
- Distributors
- Front-end loaders
- Any other construction equipment

Additionally, the exemption only applies to persons that operate hot mix asphalt manufacturing plants. A person that does not operate a hot mix asphalt manufacturing plant is not eligible for the exemption.

Example #1: A third party paving company does not operate a hot mix asphalt manufacturing plant to produce hot mix asphalt, but instead purchases all of their asphalt from an unrelated company that does operate a hot mix asphalt manufacturing plant. Neither the dump trucks that the third party paving company purchases to haul hot mix asphalt from the asphalt plants to their job site, nor the pavers they purchase to be used to spread the hot mix asphalt, are exempt from sales tax, because the paving company does not operate a hot mix asphalt manufacturing plant. The third party paving company therefore must pay sales tax

on its purchase of dump trucks and pavers.

III. APPLICABILITY OF THE MANUFACTURING EXEMPTIONS

Manufacturers of "cold mix asphalt" (or other types of asphalt that are not "hot mix asphalt") or concrete are not entitled to the specific exemption for hot mix asphalt. However, the separate manufacturing exemptions may apply to these manufacturers' purchases of machinery, tools, and equipment used directly in the direct production of other tangible personal property, including "construction material" such as cold mix asphalt or concrete, which they then sell. "Construction material" means any tangible personal property to be converted into real property. This exemption also applies to material handling equipment purchased for the purpose of transporting materials into the production process from an *onsite location*.

Example #2: Concrete trucks (that is, trucks equipped with a revolving mixing drum used to mix various ingredients into concrete) are exempt from tax to the extent that they are used to produce concrete that will be sold in a retail transaction. Concrete trucks are directly used in the direct production of concrete. They have an immediate effect on the concrete being produced, as they are an essential and integral part of an integrated process which produces concrete. However, truck models that receive fully mixed product and merely churn the cement to maintain temperature and consistency during transport are not exempt, as they maintain a completed good and are not producing the good.

Example #3: Dump trucks hauling "cold mix asphalt" from an asphalt plant to the job site are subject to tax because the dump trucks are not directly used in the direct production of other goods. The trucks do not have an immediate effect on the "cold mix asphalt" being produced, as they are not an integral part of an integrated process which produces "hot mix asphalt." The trucks are used to haul completed goods after the asphalt manufacturing process has ended. They are also not considered "material handling equipment," because the plant and job site are not one "onsite location."

These manufacturers may also act as contractors, and it is important to note that the requirements for qualifying for the manufacturing exemptions are different than the sales or use tax collection and remittance requirements for contractors. Manufacturing exemptions are only available to those cold mix asphalt or concrete manufacturers acting as retail merchants, selling the cold mix asphalt or concrete that they manufacture. Contractors, including cold mix asphalt and concrete manufacturers, are retail merchants selling cold mix asphalt and concrete when they either (1) dispose of such asphalt or concrete, or (2) incorporate such asphalt or concrete into real property, under a time and material contract. "Time and material contract" means a contract in which the cost of construction material and the cost of labor or other charges are stated separately.

Contractors operating under construction contracts or installation contracts that do not meet the definition of a time and material contract are not entitled to the manufacturing exemption because non-time and material contractors are not considered retail merchants selling their manufactured goods. Instead, contractors operating under non-time and materials contracts (e.g., lump sum contracts) are purchasing construction material for their own use or consumption in the fulfillment of contractual obligations to provide real property improvement services. For more information on contractor tax collection responsibility, please see Sales Tax Information Bulletin #60.

Manufacturing of cold mix asphalt and concrete ends at the point where the asphalt or concrete is in its completed form, not when the cold mix asphalt or concrete is incorporated into real property. The fact that the cold mix asphalt or concrete must be used within a certain period of time after it is in its completed form does not mean that the construction process continues until its incorporation into real property. Equipment or machinery used to transport completed cold mix asphalt or concrete or maintain a completed product's temperature is therefore not exempt. A contractor may also need to apply the completed cold mix asphalt or concrete in a certain manner and under certain conditions in order for a job to meet code or specifications, but these are still post-production activities. Therefore, no exemption from sales and use tax is available for dump trucks, graders, rollers, distributors, front-end loaders, pavers, concrete trucks that merely churn already mixed concrete, or other construction equipment used to incorporate the cold mix asphalt or concrete into real property. This is because converting the cold mix asphalt or concrete into real property is not manufacturing, but instead is the provision of non-taxable real property improvement services.

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