

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 13-10**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.**

**SUBJECT**

The applicability of the Tennessee sales and use tax industrial machinery exemption to various equipment and supplies.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

## FACTS

[TAXPAYER] (the “Taxpayer”) has a [PRODUCT] manufacturing facility located in [CITY], Tennessee. The Food and Drug Administration (the “FDA”) regulates the Taxpayer’s industry. As part of such regulation, the FDA requires the Taxpayer to use certain process equipment and supplies (the “Process Equipment and Supplies”), which include the following:

### Water Treatment System

The Water Treatment System is one complete system used to convert water used at the facility to pharmaceutical grade water, as required by the FDA. The incoming raw water is treated by chlorine injection, pH adjustment, and filtration pretreatment methods. The objective of this pretreatment is to produce water that is suitable for use by the primary treatment sub-system. Additional equipment is needed for the primary water treatment method, water softening, reverse osmosis, and continuous deionization. Two types of water are produced: [REDACTED] Feed water and [REDACTED] Purified water.

After pretreatment and primary treatment, the [REDACTED] Purified water is further post-treated by a sanitizing ultraviolet unit and a [REDACTED] bacteria retention filter and is heated to [TEMPERATURE]. The hot water is then placed in a hot [REDACTED] Purified water tank. Hot [REDACTED] Purified water is then distributed to points of use in the facility by means of a recirculating piping and distribution system, which is designed to allow the maximum water withdrawal rate of 100 gallons per minute and is limited to two or three points of use at any single time. The hot [REDACTED] Purified water is delivered to various points of use via the water distribution pump and is used primarily in equipment and piping cleaning and in the sanitization final rinse step. However, approximately two percent of the [REDACTED] Purified water is used as an ingredient in the [PRODUCT] manufactured by the Taxpayer.

A second product water, [REDACTED] Feed water, is produced by applying a water softening treatment and heating the water to a minimum [TEMPERATURE]. The hot water is stored in a heated [REDACTED] Feed water tank. Hot [REDACTED] Feed water is then distributed to points of use in the facility by means of a recirculating piping and distribution system, which is designed to allow a maximum water withdrawal rate of 40 gallons per minute and is limited to one point of use at any single time. The hot [REDACTED] Feed water is delivered to various points of use via the water distribution pump and is used only in equipment and piping cleaning and in the sanitization initial rinse step.

### Antifoam Treatment

The Antifoam Treatment, which prevents foaming, is used to treat the water before it is discharged to the local municipal water treatment facility. If the water is not treated, the local utility could fine the Taxpayer.

### HVAC System

The HVAC System is made up of nine separate units used to maintain specified environments required by the FDA. Eighty eight percent (88%) of the system’s usage is to support the production process by maintaining the environment in processing and packaging. The cool

environment created by the HVAC system is needed to help mitigate micro contamination in the production process.

### Boiler System

The Boiler System consists of two separate units that produce the steam for the process heating. Almost seventy five percent (75%) of the steam produced is used to heat three batch kettles used in the production of the product. The remainder of the steam is used to heat water used in the process of cleaning the equipment and treated water used for cleaning and sanitization, and a very small percentage of the steam is used in warehouse space heaters and reheat coils in the HVAC system.

### Pigging System

The Pigging System is used to push the remaining [PRODUCT] from the making area piping where the [PRODUCT] is manufactured to the filling line piping where the [PRODUCT] is put into the [PRODUCT] tube. After the tube is filled, it is placed in a carton, which is ready for the retailer's shelf.

### RF Guns

The RF guns are used to track and record transfers of the materials as required by the FDA. Approximately seventy percent (70%) of an RF gun's usage occurs during the manufacturing process. An RF gun is also used to track the raw materials in storage before the process and the finished goods in warehousing before shipment.

### Printers

The printers are used to print the tracking labels. The majority of the labels printed are applied to the finished goods pallets; however, tracking labels also are placed on raw materials.

### Labels

The majority of the tracking labels are applied to the finished goods pallet before it is shipped to the Taxpayer's distribution center, while a small number of the labels are placed on the raw materials upon arrival and are also used throughout production. The palletizing of the products is part of the Taxpayer's manufacturing process. The labels attached to the pallets of product accompany the pallets when shipped to the retailers.

## **RULING**

Are the Taxpayer's purchases of the Process Equipment and Supplies subject to the Tennessee sales and use tax?

Ruling: The Taxpayer's purchases of the Water Treatment System, HVAC System, Boiler System, Pigging System, RF Guns, and Antifoam Treatment are exempt from the Tennessee sales and use tax as industrial machinery.

Labels that accompany the pallets of product sold to the retailers are exempt from the Tennessee sales and use tax as packaging. Labels used to track the raw goods prior to the manufacturing process and the products during the manufacturing process, however, are generally subject to the Tennessee sales and use tax.

The printers are subject to the Tennessee sales and use tax.

### ANALYSIS

The following table lists the Process Equipment and Supplies purchased by the Taxpayer to comply with FDA regulations, states whether a particular item is exempt, and references an enumerated explanation as to the item’s taxability. The enumerated explanations appear after the table.

<b>Item</b>	<b>Exempt from the Sales and Use Tax [WHEN PURCHASED BY TAXPAYER]</b>	<b>Explanation</b>
Water Treatment System	Yes	2
HVAC System	Yes	1
Boiler System	Yes	2
Pigging System	Yes	1
RF Guns	Yes	1
Anti Foam Treatment	Yes	3
Labels	Yes, in most cases.	4
Printers	No	5

### *Explanations*

Under the Retailers’ Sales Tax Act, TENN. CODE ANN. §§ 67-6-101 to -907 (2011), the retail sale of tangible personal property is generally subject to the Tennessee sales and use tax.<sup>1</sup> However,

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<sup>1</sup> TENN. CODE ANN. § 67-6-102(76) (Supp. 2012) defines a “retail sale” as any “sale, lease, or rental for any purpose other than for resale, sublease, or subrent.” The term “sale” is defined under the Tennessee sales and use tax laws in pertinent part as “any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration.” TENN. CODE ANN. § 67-6-102(78)(A).

TENN. CODE ANN. § 67-6-206(a) (Supp. 2012) exempts “industrial machinery” from the sales and use tax, providing that “[a]fter June 30, 1983, no tax is due with respect to industrial machinery.”

In order for an item to qualify as exempt industrial machinery, the Taxpayer must qualify as a manufacturer. A manufacturer, for purposes of the industrial machinery exemption, is “one who engages in . . . fabrication or processing as one’s principal business.”<sup>2</sup> Manufacturing is a taxpayer’s principal business if more than fifty percent of its revenues at a given location are derived from fabricating or processing tangible personal property for resale.<sup>3</sup>

The Taxpayer has indicated that its business is operating a manufacturing facility in [CITY], Tennessee, and the function of the facility is the manufacturing of [PRODUCT] for resale and consumption off the premises. Thus, it follows that more than fifty percent of the Taxpayer’s revenues at that location derives from fabricating or processing tangible personal property for resale. The Taxpayer, therefore, is a manufacturer for purposes of the industrial machinery exemption provided in TENN. CODE ANN. § 67-6-206(a).

The term “industrial machinery” is generally defined in pertinent part<sup>4</sup> as

[m]achinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises . . . where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one’s principal business.<sup>5</sup>

The term “industrial machinery” includes “[m]achines used for generating, producing, and distributing utility services, electricity, steam, and treated or untreated water.”<sup>6</sup> The definition of industrial machinery also includes “pollution control facilities,” which is defined in pertinent part as

any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution . . . when such pollutants are created as a result of fabricating or processing by

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<sup>2</sup> TENN. CODE ANN. § 67-6-102(44)(A)(i); cf. TENN. CODE ANN. § 67-6-206(b)(2) (Supp. 2012).

<sup>3</sup> *Tenn. Farmers’ Coop. v. State ex rel. Jackson*, 736 S.W.2d 87, 91-92 (Tenn. 1987); see also *Beare Co. v. Tenn. Dep’t of Revenue*, 858 S.W.2d 906, 908 (Tenn. 1993).

<sup>4</sup> Note that the definition of “industrial machinery” is extensive. This letter ruling will discuss only those portions of the definition that are applicable in the context of the [PRODUCT] manufacturing facility.

<sup>5</sup> TENN. CODE ANN. § 67-6-102(44)(A)(i).

<sup>6</sup> TENN. CODE ANN. § 67-6-102(44)(D)(i).

one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest.<sup>7</sup>

### 1. Machinery, Apparatus, and Equipment

As stated above, TENN. CODE ANN. § 67-6-102(44)(A)(i) defines "industrial machinery" in pertinent part as "machinery, apparatus and equipment . . . that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises."

An item of tangible personal property, therefore, will be exempt from the Tennessee sales and use tax as industrial machinery if the following requirements are met: 1) the item is properly considered machinery, apparatus, or equipment; 2) the item is necessary to the fabrication or processing of the products sold by the Taxpayer; and 3) the item is used primarily for the fabrication of the products sold by the Taxpayer.

The HVAC System, Pigging System, and RF guns clearly meet the broad definitions of "machinery" or "equipment."<sup>8</sup> However, every piece of machinery, apparatus, equipment that a manufacturer uses is not necessarily exempt from the sales and use tax. To qualify for the industrial machinery exemption, a system must be necessary to and used primarily for the manufacturing process.

The facts indicate that the HVAC System, Pigging System, and RF Guns meet the second requirement for exemption from the sales and use tax as industrial machinery as they are necessary to the fabricating or processing the products sold by the Taxpayer. The proper test is whether the object in question is necessary to the production process as engaged in by the taxpayer. The term "necessary" is not defined by the Tennessee Code Annotated or the Tennessee courts for Tennessee sales and use tax purposes. Nevertheless, a common definition of the term "necessary" is "absolutely needed; required."<sup>9</sup> Thus, in order for a piece of machinery, equipment, or apparatus to be "necessary" to the manufacturing process, it must be absolutely needed for that process to work. Stated conversely, for the machinery, equipment, or apparatus to be considered "necessary," the manufacturing process must not be able to function in the item's absence.

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<sup>7</sup> TENN. CODE ANN. § 67-6-102(44)(A)(ii).

<sup>8</sup> See *Tibbals Flooring Company v. Huddleston*, 891 S.W.2d 196, 198-99 (Tenn. 1994). In this case the Tennessee Supreme Court stated that "the word 'machinery' means 'machines as a functioning unit;' and 'equipment' is 'the physical resources serving to equip a person [such as] the implements (as machinery or tools) used in an operation or activity ... all the fixed assets other than land and buildings of a business enterprise.'" *Id* (citing *Tibbals Flooring Company v. Olsen*, 698 S.W.2d 60, 62 (Tenn. 1985); quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976)).

<sup>9</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 828 (11th ed. 2007).

The HVAC System is a necessary part of the Taxpayer's manner of producing its products. The six units that are part of the system maintain FDA requirements for packaging and processing by creating an environment with proper ventilation, temperature, and filtration. The system mitigates microcontamination in the production process, and the facility could not operate safely without the environment that the HVAC system creates.

The Pigging System is a necessary part of the Taxpayer's fabrication and processing system because it pushes the [PRODUCT] to the piping where it is inserted into tubes, and without the Pigging System, the [PRODUCT] and the tubes would remain separate and distinct items incapable of resale. The RF Guns are a necessary component of the Taxpayer's manufacturing process because they track and record the product throughout the manufacturing process as required by the FDA, and the facility could not operate without use of the RF Guns.

The HVAC System, Pigging System, and RF Guns meet the third requirement to qualify as exempt industrial machinery because they are primarily used in the manufacture of the Taxpayer's products. The Tennessee Supreme Court, in applying the industrial machinery exemption, found that the term "primarily" means "first of all; principally; or fundamentally."<sup>10</sup> The court also noted that the term has been held to mean "first in rank or importance, chief, principal, basic or fundamental."<sup>11</sup> The machinery, equipment, or apparatus satisfies the requirement that it be "primarily for" the fabrication of the taxpayer's products if more than fifty percent of its use is in the manufacturing operation.<sup>12</sup>

The HVAC System operates primarily for the fabrication of the Taxpayer's products. To ensure the integrity of the product, the FDA requires that such a system be in place for the Taxpayer to operate its facility and manufacture of its products. The Taxpayer states that eighty-eight percent (88%) of the system's usage is support the production process by maintaining the proper environment for processing and packaging its products. Thus, its direct and primary purpose is for the fabrication of the Taxpayer's products.

The Pigging System's only function is to push the product from one piping system to another in the facility, and thus meets the third requirement. Seventy percent (70%) of usage of the RF guns occurs to track the transfer of materials during the manufacturing process. Thus, their use is primarily for the fabrication of the Taxpayer's product. Accordingly, the HVAC System, Pigging System, and RF Guns independently meet the definition of industrial machinery under TENN. CODE ANN. § 67-6-102(44)(A)(i).

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<sup>10</sup> *Woods v. Gen. Oils, Inc.*, 558 S.W.2d 433, 436 (Tenn. 1977) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1961)).

<sup>11</sup> *Id.* (citing *Breen v. Indus. Accident Bd.*, 436 P.2d 701 (Mont. 1968); *20th Century Mfg. Co. v. United States*, 444 F.2d 1109 (Ct. Cl. 1971)).

<sup>12</sup> *Cf. Tenn. Farmers' Coop*, 736 S.W.2d at 91-92; *Misenheimer Saw & Tool, Inc. v. Huddleston*, No. 03A01-9406-CH-00226, 1994 WL 652155, at \*5 (Tenn. Ct. App. Nov. 21, 1994) (stating that the appropriate test is whether more than 50% of a business's gross sales receipts result from manufacturing).

2. Machines For Generating, Producing, and Distributing Steam, and Treated or Untreated Water

The Water Treatment System and the Boiler System come within the scope of the industrial machinery exemption under TENN. CODE ANN. § 67-6-102(44)(D)(i), which provides that industrial machinery that is necessary to and primarily for the manufacturing process includes “[m]achines used for generating, producing, and distributing . . . steam and treated or untreated water.” The Tennessee Supreme Court, in analyzing this subsection, has stated that “the threshold question is whether the property is ‘machinery, apparatus or equipment, with all associated parts, appurtenances, and accessories.’”<sup>13</sup>

By their operation, the Water Treatment System and the Boiler System generate steam and produce treated water. Nonetheless, an analysis under TENN. CODE ANN. § 67-6-102(44)(A)(i) is also necessary pursuant to *Tibbals*.<sup>14</sup> The Water Treatment System and the Boiler System meet the first requirement of TENN. CODE ANN. § 67-6-102(44)(A)(i) because each system fits within the definitions of “machinery” or “equipment.”<sup>15</sup>

The Water Treatment System and the Boiler System also meet the second requirement of TENN. CODE ANN. § 67-6-102(44)(A)(i) that the item be necessary to the fabrication or processing of the products sold by the Taxpayer. With regard to the Water Treatment System, the FDA requires conversion of water at the facility to pharmaceutical grade water. Although only a small amount of the water produced is used as an ingredient in the [PRODUCT] manufactured by the Taxpayer, the remaining water produced is delivered throughout the facility and used to clean equipment and piping and in sanitization, both of which are vital to the operation of the plant. The Water Treatment System is an appurtenance necessary for the operation of the machinery and equipment that produce the Taxpayer’s product. It is also an integral part of the manufacturing process, and the Taxpayer could not produce a sellable product without it.<sup>16</sup> As such, the operation of the Water Treatment System is necessary to the fabrication of Taxpayer’s products.

The Boiler System creates the steam that heats the batch kettles used in the manufacturing process, creates the steam for the HVAC System, and creates the steam used to heat water used in cleaning and sterilization. Such steam is essential to the fabrication of the Taxpayer’s end product. Thus, the Boiler System is necessary to the fabrication of the Taxpayer’s products.

Finally, the Water Treatment System and the Boiler System meet the third requirement of TENN. CODE ANN. § 67-6-102(44)(A)(i) that the item be primarily for the fabrication of the products sold by the Taxpayer. With regard to the Water Treatment System, although the Taxpayer only uses two percent (2%) of the [REDACTED] Purified Water processed by the Water Treatment

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<sup>13</sup> *Tibbals*, 891 S.W.2d at 198-200.

<sup>14</sup> See *supra* note 8.

<sup>15</sup> See *id.* at 198-99.

<sup>16</sup> See *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 510 (Tenn. 2004); *Int’l Playing Card & Label Co., Inc. v. Chumley*, No. E2005-00581-COA-R3-CV, 2005 WL 3287939, at \*6 (Tenn. Ct. App. Dec. 5, 2005).

System as an ingredient in the [PRODUCT] that it manufactures, it uses all of the remaining [REDACTED] Purified Water as well as all of the [REDACTED] Feed Water produced in cleaning equipment and pipes as well as in its sanitization initial rinse step. Such cleaning and sanitization are vital parts of the manufacturing process, and the FDA requires the use of these types of pharmaceutical grade water in the Taxpayer's facility. Because the Water Treatment System is essential for the manufacturing process and all of the water processed by the system is used in the manufacturing operation, the system functions primarily for the fabrication of the Taxpayer's product.

The Taxpayer uses the Boiler System primarily in the production process because it creates the steam for the HVAC and also heats the batch kettles used in the manufacturing process. The Taxpayer states that almost seventy five percent (75%) of the steam that the Boiler System produces is used in the manufacturing operation. As such, the Boiler System is fundamental to the manufacturing process.

Thus, the Water Treatment System and the Boiler System, respectively in place to treat water and produce steam, meet the threshold definition of industrial machinery and are properly exempt under TENN. CODE ANN. § 67-6-102(44)(D)(i).

### 3. Pollution Control Facilities

The definition of "industrial machinery" includes pollution control facilities. "Pollution control facilities" is defined in pertinent part as "any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution . . . when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest."<sup>17</sup>

The Antifoam Treatment is exempt from the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-206(a) as a pollution control facility. The Taxpayer applies the Antifoam Treatment to the water used in production as a system or method to eliminate foam that the Taxpayer creates during its manufacturing process before it discharges the water to the local municipal water treatment facility. Without the Antifoam Treatment, the water used in production would be offensive to the public. Moreover, the local water utility service would fine the Taxpayer if it did not apply the Antifoam Treatment.

### 4. Packaging

The labels that accompany pallets of product sold to the retailers are exempt from the Tennessee sales and use tax as packaging materials. TENN. CODE ANN. § 67-6-329(a)(13) provides an exemption for materials used in packaging a product, including labels, when such packaging accompanies the product when sold directly to the consumer or is incidental to the sale of the

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<sup>17</sup> TENN. CODE ANN. § 67-6-102(44)(A)(ii).

product for resale. Further, materials that come in direct contact with the product and are consumed within twenty-five days also are exempt.<sup>18</sup>

The majority of the labels that the Taxpayer uses are attached to the pallets shipped to the retailers. These labels are merely incidental to the sale of the products to the retailer and, thus, exempt from the Tennessee sales and use tax. The labels used to track the raw goods prior to the manufacturing process and the products during the manufacturing process, however, are not packaging materials and are subject to the Tennessee sales and use tax unless they come in direct contact with the product.

## 5. Taxable Items

The printers fail to qualify for exemption from the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-206(a) as industrial machinery. As discussed above, an item of tangible personal property will be exempt from the Tennessee sales and use tax as industrial machinery if it is properly considered “machinery, apparatus and equipment with all associated parts, appurtenances and accessories” that is “necessary to, and primarily for, the fabrication or processing” of the products sold by the taxpayer.<sup>19</sup>

In the Taxpayer’s case, the printers are neither necessary to nor primarily for the fabrication of the Taxpayer’s products. Rather, such items have only a secondary or indirect use with respect to the manufacturing process. The printers print the labels that accompany the product when sold to retailers. While the labels may be applied during the manufacturing process, the printing occurs outside of that process and is not essential to the manufacturing. Further, machinery used to apply the labels to the pallets may be exempt as machinery used to package the product, but the printers are one step removed from this process and do not perform the actual packaging of the product.

In applying the definition of “primarily” in the context of the industrial machinery exemption, the Tennessee Supreme Court denied the industrial machinery exemption to an oil processing company, holding that tanks used to store oil awaiting processing had “at most, only a secondary and indirect use” in the manufacturing process.<sup>20</sup> Applying this definition to the Taxpayer’s printers, the printers’ principal function is to print information for tracking applied to finished goods pallets. While this function is important, as with the tanks in *Woods*, the function, nonetheless, is only secondary or indirect with respect to the manufacturing process.

The burden is on the taxpayer to establish entitlement to an exemption from taxation. The Tennessee Supreme Court has stated that “[a]lthough the rule is well-established that taxing legislation should be liberally construed in favor of the taxpayer and strictly construed against the taxing authority, it is an equally important principle of Tennessee tax law that ‘exemptions

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<sup>18</sup> TENN. COMP. R. & REG. 1320-5-1-.40 (1974).

<sup>19</sup> TENN. CODE ANN. § 67-6-102(44)(A)(i).

<sup>20</sup> *Woods*, 558 S.W.2d at 436.

from taxation are construed against the taxpayer who must shoulder the heavy and exacting burden of proving the exemption.”<sup>21</sup> The Tennessee Supreme Court has also stated that the burden is on the taxpayer to establish the exemption, and any well-founded doubt is sufficient to defeat a claimed exemption from taxation.<sup>22</sup>

With respect to printers, sufficient doubt exists so as to defeat the application of the industrial machinery exemption to such items.

Jennifer Wilson  
Assistant General Counsel

APPROVED: Richard H. Roberts  
Commissioner of Revenue

DATE: 08/27/2013

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<sup>21</sup> *Am. Airlines, Inc. v. Johnson*, 56 S.W.3d 502, 506 (Tenn. Ct. App. 2000) (quoting *Rogers Grp., Inc. v. Huddleston*, 900 S.W.2d 34, 36 (Tenn. Ct. App. 1995)).

<sup>22</sup> *Id.* (citing *Tibbals*, 891 S.W.2d at 198; *United Cannery, Inc. v. King*, 696 S.W.2d 525, 527 (Tenn. 1985)).