



CORPORATE LAW CLIENT ALERT

Nebraska Supreme Court Rules that Machinery and Equipment Sales and Use Tax Exemption Not Subject to Minimum 50% Manufacturing Use

The Nebraska Supreme Court recently issued its decision in *Kerford Limestone Co. v. Nebraska Dep't of Revenue*, holding that sales and use tax exemptions for manufacturing machinery or equipment do not require that manufacturing use be greater than 50% of total use to qualify. In this matter, the plaintiff purchased a motor grader and claimed an exemption from sales and use tax on the purchase, claiming it was exempt manufacturing machinery and equipment under Neb. Rev. Stat. § 77-2701.47. The Department of Revenue denied the exemption request and argued in court that based on the Revenue Ruling 1-05-1 (Oct. 12, 2005), which focused on the definition of manufacturing machinery and equipment, the manufacturing use must be greater than 50% of total use to qualify for the exemption.

The court found that the Department of Revenue had incorrectly interpreted the statute in finding that in order to qualify for the exemption from sales and use tax found in § 77-2701.47(1), the items must have been purchased by a person (including a business) engaged in the business of manufacturing, and any amount of its use must be in manufacturing. So long as the items are not excluded from the definition of "manufacturing machinery and equipment" (Neb. Rev. Stat. § 77-2104.47(2) excludes, among others, specific categories of property, including hand tools, office equipment, and computers and software), any use by the manufacturer in manufacturing will qualify the machinery and equipment for the exemption from sales tax under § 77-2701.47

One issue that has not been resolved is "what constitutes a manufacturer or person engaged in the business of manufacturing?" Neb. Rev. Stat. § 77-2701.46 defines "manufacturing" as:

"an action or series of actions performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing. Manufacturing does not include retail operations, the generation or transmission of electricity, the production or transmission of information, programming, or data, the preparation of food for immediate consumption, or the purification or transportation of water."

However, the statute is unclear on whether "any portion" of a business' operations in manufacturing will qualify it as a "person engaged in the business of manufacturing." We will continue to monitor developments on this issue.



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