**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-2003-041** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Nafion membranes used in production of caustic soda and chlorine.** |
| **Keywords:** |  |
| **Approval Date:** | **11/13/2003** |

**Body:**

Office of Policy & Research

November 13, 2003

XXXXXX
XXXXXX
XXXXXX
XXXXXX

Re: Private Letter Ruling Request

Dear XXXXX:

Thank you for your recent inquiry into the tax status of certain tangible personal property used by XXXXXXXX (the Taxpayer) at its Wichita, Kansas facility. XXXXX contends that nafion membranes are used in its production process and as such are exempt pursuant to K.S.A. 79-3606(kk).

The Taxpayer states that the nafion membranes are used in its production of caustic soda and chlorine. The membranes are a divider unit used in the electrolytic cells that hold salt water. (See attached Exhibit “A”) The process involves the conversion of salt water into caustic soda and chlorine by use of electrolytic cells. The membranes are used as dividers in the electrolytic cells. As the electrolytic process proceeds, the process damages the membrane. The membrane is tested and monitored for erosion from the chemicals. Over time the chemicals eat enough away that the membrane must be replaced. The membranes do not totally dissipate. The Taxpayer states that the average life of the membranes is between one to two years, and then they are replaced when needed. There is no salvage value. The caustic soda, chlorine and other products produced using the nafion membranes are intended for resale.

K.S.A. 79-3606(kk) defines “manufacturing or processing business” as a business that utilizes an integrated production operation to manufacture, process, fabricate, finish, or assemble items for wholesale and retail distribution as part of what is commonly regarded as a industrial manufacturing or processing operation or a agricultural commodity processing operation.

An “integrated production operation” means an integrated series of operations engaged in at a manufacturing or processing plant to convert tangible personal property into a different product or form of product. Such operations generally include the machinery and equipment that makes up a production line along with adjunct machinery and equipment that function simultaneously with the production line as part of an interrelated operation. An integrated production operation also includes pre-production material-handling operations and post-production distribution operations done at the manufacturing or processing plant. Generally, how machinery or equipment is used determines whether it qualifies for this exemption.

Integrated production operations encompass machinery and equipment used at a plant or facility to:

Ø Receive, handle, treat, or store raw materials before production or processing;
Ø transport, handle, or store the property being manufactured or processed during production or processing operations;
Ø effect a physical change on the property;
Ø guide control, or direct the movement of the property during manufacturing or processing;
Ø test or measure raw materials and the product as part of the integrated operation;
Ø plan, manage, control, or record the production flow from receipt of raw materials to managing inventories of the finished product;
Ø produce energy for, lubricate, control, or enable the functioning of other production machinery at a continuous production operation;
Ø package the manufactured or processed product;
Ø transport electricity, gas, water, steam, or other items used in production (1) from the point of generation, if in the plant, to the production operation, or (2) from the point it is first metered at the plant site, if generated or produced outside the plant, to the production operation;
Ø cool, heat, filter, refine, or otherwise treat water, oil, solvents, acids, and other substances used in production operations;
Ø provide and control the environment in special and limited areas of the plant, such as clean rooms, painting areas, and freezing or cold storage areas;
Ø treat, transport, or store waste or other byproducts of the manufacturing or processing operation;
Ø control pollution caused by the production operation;
Ø when used at a mineral extraction site, to clean, separate, grind or otherwise treat or prepare the mineral or other product that has been extracted from its natural state before its transmission, distribution, or sale at retail; and
Ø transport, handle, or store property during warehousing or distribution operations.

For purposes of this exemption, exempt production equipment also includes repair and replacement parts and accessories. Exempt parts include, but are not limited to: belts, drill bits, grinding wheels, cutting bars, saws, dies, jigs, and molds. Refractory items used in production are also exempt.

It is the opinion of the Kansas Department of Revenue:

That the purchase of nafion membranes, which would be repair or replacement parts for use in the Taxpayer’s activities of producing chemicals as described herein, effect a physical change on tangible personal property and as such, are exempt from Kansas retailers’ sales tax. These activities constitute processing under subsection “kk.”

This is a private letter ruling pursuant to Kansas Administrative Regulation 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this ruling.

Very truly yours,

Richard Cram
Director, Office of Policy and Research

**Relevant Documentation**

**Date Composed: 10/21/2003 Date Modified: 11/17/2003**