

NOTICE 14-16

NEW SALES TAX EXEMPTION FOR SURFACE MINING OPERATORS

2014 HOUSE BILL 2378

(June 2014)

2014 House Bill 2378 adds machinery and equipment used in surface mining to the various items that the Kansas legislature has cataloged in K.S.A. 2013 Supp. 79-3606(kk)(4) and deemed to be exempt. New subsection (4)(F), which becomes law on July 1, 2014, provides:

(4) The following machinery, equipment and materials shall be deemed to be exempt even though it may not otherwise qualify as machinery and equipment used as an integral or essential part of an integrated production operation:

(F) all machinery and equipment used in surface mining activities as described in K.S.A. 49-601 et seq., and amendments thereto, beginning from the time a reclamation plan is filed to the acceptance of the completed final site reclamation.

K.S.A. 49-603(j) defines the term "surface mining" for purposes of the new exemption:

(j)(1) "Surface mining" means the mining of material, except for coal, oil and gas, for sale or for processing or for consumption in the regular operation of a business by removing the overburden lying above natural deposits and mining directly from the natural deposits exposed, or by mining directly from deposits lying exposed in their natural state, or the surface effects of underground mining. Surface mining shall include dredge operations lying outside the high banks of streams and rivers.

(2) Removal of overburden and mining of limited amounts of any materials shall not be considered surface mining when done only for the purpose and to the extent necessary to determine the location, quantity or quality of the natural deposit, if the materials removed during exploratory excavation or mining are not sold, processed for sale or consumed in the regular operation of a business.

The exemption is limited to operators that engage in surface mining and are licensed to do so by the Kansas Conservation Commission. *K.S.A. 49-603(a), (c), and (e); K.S.A. 49-605.* Surface-mining operators include concrete manufacturers that mine limestone, qualifying sand or gravel retailers, and ready-mix concrete businesses that operate qualifying sand or gravel pits for consumption or sale.

Mining is done to extract minerals, rock, and other naturally-occurring geological materials from the earth. Surface mining is a broad category of mining that is commonly understood to involve the removal of soil and rock --- the overburden--- that overlies a valuable geological deposit so the deposit can be accessed and removed from the earth. However, K.S.A. 49-603(j) defines "surface mining" more broadly so that exemption applies to machinery and equipment used in (1) strip mining, open pit mining, and contour mining operations, (2) quarrying, (3) the mining of surface deposits that lie exposed in their natural state, (4) reclamation projects undertaken by mine operators to correct the surface effects of underground mining, provided the mining did not involve the removal of coal, oil, or gas, and (5) dredging operations that are located outside the high banks of streams and rivers.

Surface mining does not include underground mining in which the geological deposit is accessed and removed through shafts or tunnels. The exemption does not apply to equipment used for prospecting, exploration, or for what is occasionally referred to as "borehole mining" for oil or gas. The exemption does not apply to equipment used for coal, oil, or gas severance or to remediate petroleum, chemical, or brine-impacted soil that is commonly found at petroleum drilling, storage, production, and retail sites.

Surface mining, as defined at K.S.A. 49-603(j), requires the use of heavy equipment. Bulldozers, power shovels, front-end loaders, scrapers, backhoes, and other types of earthmoving equipment are used to remove the overburden. The rock and mineral deposits are often severed from their naturally occurring state by the use of boring equipment that penetrates the deposit to allow blasting, by the use of bulldozer-mounted rippers, and by hydraulic hammers mounted on power-shovel booms. In other types of surface mining, power shovels, draglines, and bucket-wheel excavators are used to remove deposits, such as sand and gravel. Some of this equipment loads the deposits on conveyor belts or into trucks and trailers for hauling.

The revised *Integrated Production Machinery and Equipment Exemption Certificate*, ST-201, (Rev. 6/14) allows licensed surface-mine operators to claim exemption, beginning July 1, 2014, for purchases of both their surface mining equipment and the integrated production equipment they use to crush, size, and convey the mineral or rock after it has been severed from the earth. Licensed surface mining operators should check the first two boxes listed in line 4 of ST-201, which will allow exemption to be claimed for the:

- Purchase, lease, or rental of the integrated production equipment described in line 1.
- Purchase, lease, or rental of surface-mining equipment, as discussed in Notice 14-16.

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Taxpayer Assistance Center
Kansas Department of Revenue
915 SW Harrison St., 1st Floor
Topeka, KS 66612-1588
Phone: 785-368-8222
Fax: 785-291-3614