



COMMONWEALTH of VIRGINIA

Department of Taxation  
Richmond, Virginia 23282

MEMORANDUM

TO: William J. West, Supervisor  
Technical Services Section

DATE: December 9, 1985

RE: Policy Request/Sales and Use Tax  
Preponderance of Use

This will reply to your memorandum of July 8, 1985, in which you wish to determine the correct application of the preponderance of use test in three different situations.

First, you wished to determine how the tax would apply when a fork lift is used 55 percent of the time in exempt production activities. In such an instance, the preponderance of the fork lift's use is direct use in manufacturing rendering the fork lift totally exempt from the tax under the provisions of Section 58.1-608.1 of the Code of Virginia.

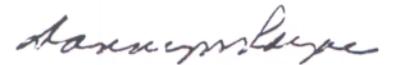
Second, you wished to determine the applicability of the tax when a taxpayer maintains a central store room of supplies and uses 75% of such stores for exempt purposes. Virginia Code Section 58.1-608.1 sets out an intention to fully exempt only a particular item that is used both in exempt and taxable manufacturing, mining, or processing activities. Accordingly, the preponderance of use test does not apply to groups of like items in a central store room.

Lastly, you wished to determine the application of the tax when a taxpayer maintains a fuel oil storage tank that provides fuel to a production boiler and a boiler for plant heating; 90% of the fuel in this instance is used in the production boiler. While Virginia Code Section 58.1-608.1 provides the preponderance of use test with respect to machinery, tools and equipment, it does not do so with respect to

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one-time consumables like fuel, power or energy. Thus, fuel oil used in an exempt and taxable manner may be prorated for audit purposes. However, fuel storage tanks may be subject to the preponderance of use test when used both in a taxable and exempt manner.

  
Danny M. Payne, Director  
Tax Policy Division

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Approved:   
W. H. Forst  
Tax Commissioner