

This letter concerns sales for resale. See 86 Ill. Adm. Code 130.1401, et seq. and *Dearborn Wholesale Grocers, Inc. v. Whitler*, 82 Ill.2d 471 (1980). (This is a PLR.)

July 16, 2010

Dear Xxxxx:

This letter is in response to your letters dated April 22, 2009 and April 15, 2010, in which you requested a Private Letter Ruling on behalf of COMPANY. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter of June 22, 2009, you have stated and made inquiry as follows:

I. INTRODUCTION

We are submitting this request for a Private Letter Ruling, pursuant to the provisions of 2 Illinois Administrative Code Section 1200.110 on behalf of our client COMPANY, seeking written confirmation upon which our client may rely that:

(1) based on the nature of the uranium materials sold for ultimate use in the nuclear power generation industry and the specific counterparties to which COMPANY has made sales of A at the [] conversion facility in CITY, Illinois, all of COMPANY's sales transactions since it commenced business in Illinois were tax-exempt sales for resale and, therefore, were not subject to Illinois Retailers' Occupation Tax ('ROT') and Use Tax;

(2) COMPANY has been a wholesaler of uranium materials purchased for ultimate use in the nuclear power generation industry since it commenced business and is not required to be registered as a retailer under the ROT Act;

(3) COMPANY was not required to file Illinois ROT/Use Tax returns (Form ST-1) reporting any of the gross receipts from its A trading transactions at the facility since COMPANY commenced business in Illinois because all of those transactions were tax-exempt sales for resale, and COMPANY will not be required to file such returns for future tax periods so long as the operations of COMPANY in Illinois do not change; and

(4) COMPANY's receipt, on a non-contemporaneous basis, of signed representation letters from counterparties purchasing A from COMPANY will relieve COMPANY of the statutory obligation to have collected and remitted ROT and Use Tax with respect to the sales transactions covered by the representation letters.

We are requesting these rulings for all tax periods during which COMPANY's A trading transactions have occurred since COMPANY commenced business in Illinois, as well as for all relevant future tax periods so long as the operations of COMPANY in Illinois do not change.

We believe that these are important issues for COMPANY and the Illinois Department of Revenue (the 'Department'). The conversion facility is the only one of its kind operating in the United States. It is a major storage site for A, the raw material that is processed at the facility.

While the Department has issued guidance and ruling letters regarding sales for resale and there is a body of case law on the topic in Illinois, we have not been able to identify any rulings directly on point for nuclear materials that address the unique nature of the transactions and the regulations that apply to the possession and use of nuclear materials in the United States.

Neither COMPANY nor any of its affiliated companies is subject to any pending audit or litigation in Illinois involving the issues raised in this PLR request. To the best of the knowledge of COMPANY and its representative, the Department has not previously ruled on these issues for COMPANY—or any other taxpayer, for that matter. No request for a ruling on the issues raised herein or similar issues has been submitted to the Department, and none has been withdrawn.

A power of attorney authorizing our representation of COMPANY in this matter is attached.

II. FACTS

A. COMPANY's Business Operations

COMPANY is a company incorporated under the laws of COUNTRY AND COUNTRY that is primarily engaged in the business of trading uranium products, including A, B and C, with counterparties located throughout the world. COMPANY also provides marketing services for uranium producers. COMPANY began its trading activities in DATE. COMPANY maintains its corporate headquarters and sole office in TOWN, and the company has maintained no offices or employees in Illinois. COMPANY has had

physical presence in Illinois through its ownership of A, a highly regulated commodity, that is stored in the [] processing facility located in CITY, Illinois, and being held for resale by COMPANY to counterparties.

B. Processing and Trading of Nuclear Materials in the United States

Nuclear materials are highly regulated commodities in the United States, with physical possession of the uranium being confined largely to the companies that process and fabricate the uranium (as opposed to trading it) and operators of nuclear power plants that utilize uranium fuel rods to generate electricity. A is converted into B at the [] processing facility in CITY, Illinois (or overseas); further processed into C at the BUSINESS facility in CITY/STATE2 (or overseas); and then fabricated into nuclear fuel rods at the ABC fabrication facilities in STATES, respectively, or shipped to a [OVERSEAS] enrichment facility. All of the operators of these processing, enrichment and fabrication facilities have licenses issued by the Nuclear Regulatory Commission (the 'NRC') authorizing them to possess and process such uranium materials.

A, B and C are all raw materials for the manufacture of fuel rods for nuclear reactors, at different stages of the manufacturing process.

The NRC maintains very strict regulatory control over the sale, possession, processing and transportation of nuclear materials in the United States. Although there is no formal regulated commodity trading exchange for uranium trading activity, there is worldwide spot trading activity that includes sales, swaps, and loans of uranium by a number of traders, including COMPANY, with respect to which the physical possession of the nuclear materials remains with the third-party processor. The trading transactions that are the subject of this ruling request are very similar to those seen on commodity exchanges, where the legal title to fungible commodities are continuously traded, but actual physical delivery of the commodities is deferred until the commodity is needed for use, consumption, or further processing in the distribution chain.

Non-physical owners like COMPANY are credited with legal title to the uranium products that they have purchased in a book account at the third-party processing facility where the uranium products are located. The uranium products themselves are fungible commodities that are commingled with uranium product owned by other trading parties and/or the operator of the third-party processing facility. When COMPANY sells A, B or C to a buyer at a third-party conversion or enrichment facility, legal title to the material passes to the buyer in the operator-maintained book account at the same facility. The uranium material remains in storage at the third-party conversion or processing facility until it is transported to another facility for further processing or for fabrication into fuel rods.

C. COMPANY's Trading Activity in Illinois

COMPANY's only sales activity in Illinois arises from its purchases, storage as inventory for resale, and sales of A, with legal title to the material passing to COMPANY or its counterparty to the [] facility. COMPANY holds a General License from the NRC, issued under 10 CFR Part 40.21, that authorizes COMPANY to receive title to source or byproduct material, as defined in this part, without regard to quantity. This general license does not authorize COMPANY to physically receive, possess, deliver use, or transfer source or byproduct material. The legal title to the A passes in these

transactions in Illinois (as opposed to another state) because the A material generally resides in the physical possession of the [] facility until it is converted into B at which time, [] delivers possession to a fungible allocation of B at the BUSINESS enrichment facility located in CITY/STATE2.

It is COMPANY's understanding that the entity seeking conversion services will maintain title to the B until such time as the entity either resells the B to a third party or the entity seeks enrichment of the B by BUSINESS in STATE2. It is COMPANY's further understanding that entities obtaining enrichment services from BUSINESS with title to B located at the BUSINESS facility generally transfer that title to BUSINESS for the enrichment process, whereupon BUSINESS transfers title to the C to the entity and delivers possession of a fungible allocation of C at the BUSINESS fabrication facility in STATES, respectively. BUSINESS has orally confirmed to COMPANY that, as a general matter, entities transfer title to their B in connection with their enrichment service transactions with BUSINESS, and COMPANY's own agreement with BUSINESS provides for title transfers. If the enrichment of the B is conducted at an overseas enrichment facility, there may not be a transfer of title to the B.

COMPANY holds the A that it owns at the [] facility as inventory awaiting resale by COMPANY to counterparties. COMPANY may sell, swap, or trade the A for other uranium products at different stages of processing that are located in other states or countries. Although these transactions are frequently complex, they are predicated on physical possession of the uranium products remaining with the licensed conversion, enrichment or fabrication facility that is holding or storing the uranium products for the legal title owners. COMPANY does not sell nuclear fuel rods, and COMPANY does not make any sales of A or other uranium products to ABC or its subsidiaries, which are the only operators of nuclear power plants in Illinois. Any conversion of the A into B at the [] facility, the first of many separate steps in processing A into nuclear fuel rods, would be performed for a COMPANY counterparty after it has acquired title to the A from COMPANY. The subsequent enrichment of the B into C, and the fabrication of the C into fuel rods, usable in a nuclear reactor, occurs at facilities outside Illinois. Moreover, as noted earlier, COMPANY understands, but it has not yet been confirmed by BUSINESS in writing, that the enrichment process at the BUSINESS facility generally involves BUSINESS acquiring title to the B from its owner, enriching the B into C, and BUSINESS then transferring title to the C to the owner. To the extent that these transfers of title occur, further resales of the uranium products will necessarily occur prior to their end-use in the production of electricity in a power generation facility. The enrichment process necessarily occurs at facilities outside Illinois because neither [] nor any other facility located in Illinois enriches B into C.

Accordingly, for the purposes of the Illinois ROT and Use Tax, all the A sale, swap and trading transactions should be treated as sales for resale and COMPANY's storage of this uranium product at the [] facility is a tax-exempt interim use, pending resale.¹

D. COMPANY's Illinois ROT/Use Tax Compliance

COMPANY is not registered as a retailer with the Department because COMPANY has always believed that it was purely a wholesaler that is not subject to the Illinois ROT Act with respect to purchases, ownership and sales of A in Illinois. COMPANY has not been requesting resale certificates from its trading counterparties (nor have counterparties requested resale certificates for COMPANY) because COMPANY has always

understood that its counterparty was purchasing the A from COMPANY for the purpose of reselling such nuclear material.

To confirm this fact, COMPANY is now in the process of obtaining signed representation letters from the counterparties that purchased A from COMPANY in closed transactions stating that such purchases of A were for the purpose of resale to other counterparties or for conversion into B for sale; and that such A was, in fact, either resold, incorporated into other tangible personal property that was resold, or placed into inventory and remains held as inventory for resale. COMPANY expects that it will be able to obtain such representation letters covering a significant portion (but not all) of its A sales transactions that have been made in Illinois, and COMPANY will request resale certificates or representation letters from counterparties on a going forward basis. Even if COMPANY is not able to obtain representation letters covering all of its A sales transactions at the [] facility, the very nature of the nuclear industry and the specific counterparties with which COMPANY is dealing (*i.e.*, entities that either do not own or operate nuclear reactors or, to the extent the entity does have nuclear reactors, the reactors are located outside Illinois and the A that the entity purchased from COMPANY would have to be further enriched and fabricated into fuel rods at facilities located outside Illinois before it could be used in the nuclear reactors, with, it is COMPANY's understanding, an enrichment step that may require further title transfers from the entity to BUSINESS) confirm that each of COMPANY's A transactions must have been a tax-exempt sale for resale.

III. RULINGS REQUESTED

COMPANY is requesting the following rulings from the Department:

1. Based on the nature of the materials sold for ultimate use in the nuclear power generation industry and the specific counterparties to which COMPANY has made sales of A at the [] conversion facility in Illinois (*i.e.*, parties that do not use or consume uranium material in power generation facilities in Illinois), COMPANY's sales transactions since it commenced business in Illinois are tax-exempt sales for resale for purposes of the Illinois ROT and Use Tax.
2. Because COMPANY has been acting solely as a wholesaler since it commenced business in Illinois, the company is not required to be registered as a retailer under the ROT Act.
3. COMPANY was not required to file Illinois ROT/Use Tax returns (Form ST-1) reporting any of the gross receipts from its A trading transactions at the [] facility since it commenced business in Illinois because all of COMPANY's A sales transactions at the [] conversion facility in Illinois are tax-exempt sales for resale, and COMPANY will not be required to file such turns in the future so long as the operations of COMPANY in Illinois do not change.
4. COMPANY's receipt, on a non-contemporaneous basis, of signed letters from counterparties representing that all of the purchases of A from COMPANY were made for resale and that such uranium products were, in fact, resold, incorporated into other tangible personal property that was resold, or continue to be held in inventory for resale, will relieve COMPANY of its statutory obligation to have collected, remitted and reported ROT liability and Illinois Use Tax from

counterparties on such sales of A covered by the representation letters, even though COMPANY did not obtain these representation letters from the counterparties at the time the sale transactions occurred, and even though the counterparties do not have active retail registration numbers.

We have not been able to identify any ruling from the Department that addresses these issues for traders of nuclear materials or comparable trading activity.

IV. LEGAL ANALYSIS AND AUTHORITIES

A. All of COMPANY's A Sale Transactions Were Exempt from ROT and Use Tax

The Illinois ROT is imposed, at a rate of 6.2 percent (plus local ROT rates), on a retailer on its gross receipts from retail sales of tangible personal property in Illinois. 35 ILCS 120/2. The term 'sale at retail' is defined to mean 'any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, *and not for the purpose of resale*, in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration.' 35 ILCS 120/1 (emphasis added). Tangible personal property is deemed to be purchased for resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. *Id.* In most cases, COMPANY's sales have been to counterparties that trade the A through resale.

The balance of COMPANY's sales have been to counterparties for the purpose of the counterparty converting the A into B for resale or further enrichment at the BUSINESS facility in STATE2 (or overseas). It is COMPANY's understanding that the enrichment process at the BUSINESS facility generally involves BUSINESS acquiring title to the B from its owner, enriching the B into C, and BUSINESS then transferring title to the C to the owner. To the extent that these transfers of title occur, they result in the further resale of the uranium product and, accordingly, COMPANY submits that all of its transactions with counterparties that acquire the A for conversion into B and subsequent enrichment at the BUSINESS facility into C qualify as sale for resale transactions. Similarly, to the extent that a COMPANY counterparty converts its purchased A into B and a non-U.S. uranium enrichment facility takes title to the B in the course of providing enrichment services to the counterparty (or the COMPANY counterparty resells the C), COMPANY's sale of A to that counterparty should also qualify for the Illinois sale for resale exemption.

The Illinois Use Tax is imposed, at a rate of 6.25 percent, upon the privilege of using in Illinois tangible personal property that was purchased at retail from a retailer. 35 ILCS 105/3. The term 'use' is defined to mean 'the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent such property is not first subjected to a use for which it was purchased.' 35 ILCS 105/2. Retailers are required to collect the Use Tax from purchasers of tangible personal property at retail in Illinois. 35 ILCS 105/9. However, if the seller of tangible personal property for use would not be taxable under the ROT Act despite all elements of the sale occurring in Illinois, then the Use Tax does not apply to the use of the tangible personal property in Illinois. 35 ILCS 105/3-65.

As a result of the application of the Illinois resale exemption, COMPANY's sales of A to counterparties at the [] conversion facility in Illinois were not subject to the ROT or Use Tax in situations where the counterparty was purchasing the A for the purpose of reselling it to another counterparty or converting it into B at the [] facility (or overseas) and enriching that B into C at an uranium enrichment facility that takes title to the B in the course of providing enrichment services to the counterparty.

The resale exemption would also apply to swap transactions in which COMPANY transferred title to A to a counterparty at the [] facility in exchange for the counterparty transferring legal title to A or some other uranium product to COMPANY at another processing or fabrication facility in another state or country. Under 35 ILCS 120/1 and Section 130.425(a) of Title 86 of the Illinois Administrative Code, 'selling price' or the 'amount of sale' means the consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and service ... ' COMPANY submits that all of its 'swap' transactions qualify as offsetting sale transactions, with COMPANY's counterparty acquiring the A material from COMPANY for the purpose of reselling it to yet another counterparty. The swap transactions permit COMPANY and its counterparty to exchange ownership of the nuclear materials without the need for transporting them.

COMPANY's ownership of the A at the [] facility in Illinois between the time that COMPANY purchased it and resold it qualifies for the interim use exemption in 35 ILCS 105/2. Under this statute, the term 'use' does not mean the demonstration use or interim use of tangible personal property by a retailer before he sells that tangible personal property. COMPANY did not have any physical possession of the A that could be considered to be a taxable 'use,' but even if COMPANY had such possession, its holding of the A for eventual resale would be a tax-exempt interim use that did not subject COMPANY to Use Tax on the inventory.

B. COMPANY Is Not Required to Be Registered as a Retailer under the ROT Act

Dearborn Wholesale Grocers, Inc. v. Whitler, 82 Ill. 2d 471, 413 N.E. 2d 370 (Ill. 1980), stands for the proposition that the Illinois ROT ACT does not apply to wholesalers that sell tangible personal property in Illinois only for resale. In *Dearborn Wholesale Grocers*, the Department assessed ROT liability against a wholesaler of food and related items to retail grocery stores because Dearborn Wholesale Grocers was not able to produce resale certificates from its retail grocery store customers representing that their purchases from Dearborn Wholesale Grocers were for the purpose of resale. The Department based its tax assessment on the statutory requirement in 35 ILCS 120/2c that 'no sale shall be made tax-free on the ground of being a sale for resale unless the purchaser has an active registration number or resale number from the Department and furnishes the number to the seller in connection with certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale.' The Department also relied on the statement in 35 ILCS 120/7 that 'it shall be presumed that all sales of tangible personal property are subject to tax under [the ROT] Act until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable.' However, the Illinois Supreme Court held that Dearborn Wholesale Grocers was not subject to the ROT Act and its tax compliance provisions

because the ROT only applies to retailers, not to wholesalers who make no retail sales in Illinois and sell exclusively for resale. The Illinois Supreme Court concluded that the apparent purpose of Section 2c and Section 7 are to provide a means for retailers subject to the ROT Act to demonstrate that a particular sales transaction was a sale for resale exempt from ROT and Use Tax.

Because COMPANY makes no sales of A at retail, we respectfully submit that COMPANY is not required to register as a retailer with the Department and collect resale certificates from its counterparties.

C. COMPANY Was Not Required to File Illinois ROT/Use Tax Returns

Because COMPANY is not a retailer under the holding of *Dearborn Wholesale Grocers*, we respectfully submit that COMPANY has not been required to file Illinois ROT/Use Tax returns (Form ST-1). If COMPANY were to be required to file such tax returns, those returns would report zero tax liability because all of COMPANY's A sales transactions in Illinois were tax-exempt sales for resale.

D. The Representation Letters that COMPANY Obtains from Counterparties Relieve COMPANY of the Obligation to Pay ROT and Collect Use Tax on its Sales for Resale of A to Counterparties

A person who sells tangible personal property to a purchaser in Illinois is presumed to be making a taxable retail sale unless the person obtains a signed certificate of resale from the purchaser, stating that the property is being purchased for purposes of resale (including use as an ingredient or raw material in the manufacture, conversion or fabrication of another article of tangible personal property for sale). 35 ILCS 120/7; 86 Ill. Admin. Code § 130.1401. Provided that the resale certificate is correct, the Department will accept the certificate as prima facie proof that the sale of the tangible personal property to the purchaser was exempt from ROT and Use Tax because of the resale exemption. 86 Ill. Admin. Code § 140.1405(b).

However, the tax-exempt treatment of a sale that is made for resale may be proven by 'other evidence.' It is provided in 35 ILCS 120/2c that the 'failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sale [sic] for resale, or that a particular sale is a sale for resale.' COMPANY submits that the fact that all of its sales of A at the [] facility have been for resale is conclusively demonstrated by the identity of the purchasers and facts and circumstances of the sales transactions, as described herein, the sole use of A either for resale or for processing into other nuclear products, and the unique trading structures and regulatory controls that govern possession and use of nuclear materials. In addition, as mentioned earlier, COMPANY is in the process of obtaining signed representation letters from counterparties stating that their specific purchases of A from COMPANY were for the purpose of resale to other counterparties or conversion into B for sale; and that such A was, in fact, either resold, incorporated into other tangible personal property that was resold, or placed into inventory and remains held as inventory for resale. COMPANY submits that these representation letters will constitute the type of 'other evidence' that would provide an additional basis for relieving COMPANY of any liability that it might have for not having paid ROT or collected Illinois Use Tax, or obtained resale certificates, from counterparties at the time

of the A sales transactions, even though COMPANY is only now obtaining the representation letters from the counterparties on a non-contemporaneous basis.

We are not aware of any authority that is contrary to the positions that COMPANY is asking the Department to take on the ruling requests presented herein.

V. CONCLUSION

For the reasons discussed above, we respectfully request that the Department provide the written rulings requested herein. If the Department intends to issue responses to one or more of the questions that do not agree with the ruling positions requested herein, we request that the Department contact us prior to issuing such a ruling in order to give us the opportunity to discuss the issue further and possibly request the opportunity to withdraw this request without the Department ruling. In addition, we request that the identity of COMPANY and the other parties described herein be redacted from any published version of a PLR that the Department does issue to COMPANY.

If you require any additional information please contact me.

In your letter of April 15, 2010, you have stated as follows:

This letter is a follow-up to our previous letter on behalf of COMPANY. It provides additional information which we hope will clarify the facts and assist the Department in issuing a favorable private letter ruling.

Trading Activities of COMPANY in Illinois

COMPANY is primarily engaged in the business of trading uranium. It also provides marketing services for uranium producers and investment advice with respect to the uranium market. COMPANY began its trading activities in July 1999. COMPANY has no offices or employees in Illinois. Its activities in Illinois are the acquisition, ownership, and disposition of a type of uranium, A, a highly regulated commodity, which is stored in the [] processing facility located in CITY, Illinois.

COMPANY's Illinois activities are limited to the buying for the purpose of resale the A stored at the [] facility to which it has legal title, but no right of or actual physical possession. The nuclear material that is traded by COMPANY in Illinois is not suitable for use as a nuclear fuel. COMPANY is buying and selling A, which is at the conversion stage of the nuclear fuel cycle. In order to be usable as a nuclear fuel it must be converted into B, enriched, and fabricated into fuel rods. These functions subsequent to conversion to B are performed outside of Illinois.

You have requested that we provide you with a description of the nuclear fuel cycle in order to better understand COMPANY's activity in Illinois. The following Links provide a description of the nuclear fuel cycle; we have also summarized some of the information and COMPANY's involvement in the cycle below.

.....LINKS....

Nuclear Fuel Cycle

Mining. Uranium ores in the United States typically range anywhere from about 0.05 to 0.03 percent A.

Milling. The next step in the nuclear fuel cycle, called milling, involves the purification and concentration of uranium. Mined uranium ores normally are processed by grinding the ore materials to a uniform particle size and then treating the ore with acid to extract the uranium by chemical leaching. The milling process commonly yields a dry powdered-uranium oxide material called 'yellowcake' because of its color (which is khaki).

Uranium Conversion. Milled uranium oxide, A, must be converted to uranium hexafluoride, (B), in order to separate the individual U-235 atoms from the U-238 atoms. A solid at room temperature, B can be changed to a gaseous form at moderately higher temperatures. The B conversion product contains only natural, not enriched, uranium. Currently, there is only one conversion plant in the United States, the [] processing facility located in CITY, Illinois. This is where COMPANY's property is located.

Enrichment. Natural B must be 'enriched' for it to be used as nuclear fuel. Light-water reactor fuel normally is enriched up to about 4 percent U-235. The BUSINESS and other purchasers purchase B from COMPANY for the purpose of using such B as a raw material in the manufacture of C at BUSINESS's enrichment facility in CITY/STATE2. The C material that results from BUSINESS's enrichment process can then be fabricated into nuclear fuel rods for use at nuclear power generation facilities.

Fabrication. For use as nuclear fuel, enriched B is next converted into D powder which is then processed into pellet form. The pellets are then fired in a high temperature sintering furnace to create hard, ceramic pellets of enriched uranium. The cylindrical pellets then undergo a grinding process to achieve a uniform pellet size. The pellets are stacked, according to each nuclear core's design specifications, into tubes of corrosion-resistant metal alloy. The tubes are sealed to contain the fuel pellets: these tubes are called fuel rods. The finished fuel rods are bundled together in special fuel assemblies that are then used to make up the nuclear fuel core of a power reactor.

We have attached photos of the uranium at various stages.

If you have any further questions, please call me.

DEPARTMENT'S RESPONSE:

If a person or entity makes sales that are exclusively (*i.e.*, 100%) for resale, that person or entity is not required to register under the Illinois Retailers' Occupation Tax Act when making such sales. See *Dearborn Wholesale Grocers, Inc. v. Whitler*, 82 Ill.2d 471 (1980). However, if a person or entity engages in making both wholesale and retail sales, they are required to register under the Retailers' Occupation Tax Act and file monthly sales tax returns and document the exempt status of their wholesale transactions. See *Tri-America Oil Company v. Department of Revenue*, 102 Ill.2d 234 (1984).

It is the Department's understanding that COMPANY's only sales activities in Illinois are the sale and trading of A stored at the [] conversion facility located in CITY, Illinois. The title to the A

passes from COMPANY to the purchaser prior to the conversion to B at the [] facility. The B must be further processed into C and then fabricated into nuclear fuel rods at facilities located in other states or overseas before the nuclear fuel rods can be sold to operators for use in nuclear power plants. COMPANY does not sell nuclear fuel rods or other uranium products to operators of nuclear power plants in Illinois.

Based on the representations of COMPANY and the Department's understanding of COMPANY's activities in Illinois, COMPANY is making nontaxable sales for resale of A and is not required to register or file returns with the Department for Retailer's Occupation Tax or Use Tax purposes in regards to those sales. This ruling is limited to sales by COMPANY of A located at the [] conversion facility.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC/RW:msk

ⁱ As part of its trading activities, COMPANY also lends U_3O_8 to counterparties at the [] facility. These loan transactions typically involve the transfer of legal title to a quantity of U_3O_8 from COMPANY to the borrower and the subsequent transfer back of legal title to COMPANY at the end of the loan period, at the [] facility or another facility. Repayment occurs when the transaction is reversed, using different but equivalent U_3O_8 . Because COMPANY and the borrower pass legal title to each other, these loan transactions are treated as sales transactions for purposes of the ROT and Use Tax.