

ST 10-0030-GIL 03/31/2010 MANUFACTURING MACHINERY & EQUIPMENT

The manufacturing machinery and equipment exemption does not apply to refrigeration machinery or equipment used by non-manufacturers, such as wholesale food and produce distributors. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

March 31, 2010

Dear Xxxxx:

This letter is in response to your letter dated January 24, 2010, in which you request information. 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.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am a commercial refrigeration contractor. We install and service large walk-in freezers and coolers. Our customers are companies primarily engaged in the manufacture, production, and/or wholesale distribution of food products. In general, these products are not sold at retail to the general public, but rather are sold to grocery stores, restaurants, institutions and other customers who then sell the food products at retail. Virtually all of these products are perishable. Until these products are actually sold at retail, they must be refrigerated to avoid becoming contaminated or unusable.

In reading through some of the previous opinion letters, I have found a few that relate to food products. Some excerpts follows:

ST99-0139-GIL – As a general rule, under the manufacturing Machinery and Equipment exemption, pre-production and post production storage facilities do not qualify for exemption. However, refrigeration or freezer facilities maintained at a specific temperature which is required in order to preserve a post-production manufactured product, can qualify for MM&E exemption. We have extended the regulation in the cases due to the requirements of the industry (the need to prevent contamination of the product).

ST98-0193-GIL – Essentially the same ruling.

ST01-0192-GIL – Essentially the same ruling with the added line ... Independent devices, separate from machinery but essential to the manufacturing or assembly process can qualify, including parts which require periodic replacement in the normal course of operation.

ST01-0162-GIL – Essentially the same ruling with the line regarding periodic maintenance.

All of these opinions seem to focus on the fact that the items produced or distributed are perishable and must be refrigerated until they reach the ultimate consumer. My main question is how far down the distribution chain would the exemption apply. Aside from the manufacturers, whose role is pretty clear cut, we do a lot of business with wholesale distributors (eq: a collection of wholesale food and produce distributors in an area designated by the CITY). Each distributor has their own refrigerated freezers and coolers. While they don't 'manufacture' produce, they package and ship it to retail establishments around the area. I would assume that this function would be covered since it is an essential step in getting the food products safely to market. I would like to know your opinion.

Thank you for your help in this matter. If you need any further information, please do not hesitate to call me.

DEPARTMENT'S RESPONSE:

A contract to incorporate tangible personal property into real property is considered a construction contract. The tax liabilities regarding construction contractors in Illinois may be found at 86 Ill. Adm. Code 130.1940 and 130.2075 on the Department's Internet website. The term construction contractor includes general contractors, subcontractors, and specialized contractors such as landscape contractors. If a person or business is contractually required to purchase tangible personal property for incorporation into real estate, then that person or business would be acting as a construction contractor.

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, construction contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. If such contractors did not pay the Use Tax liability to their suppliers, those contractors must self assess their Use Tax liability and pay it directly to the Department. If the contractors have already paid a tax in another state regarding the purchase or use of such property, they will be entitled to a credit against their Illinois Use Tax liability to the extent that they have paid tax that was properly due to another state. See 86 Ill. Adm. Code 150.310.

Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property to purchasers without permanently affixing the tangible personal property to real estate. See 86 Ill. Adm. Code 130.1940(b)(1). Construction contractors can purchase such tangible personal property tax-free for resale by providing their suppliers with Certificates of Resale. See 86 Ill. Adm. Code 130.1405.

Persons who sell tangible personal property must either pay tax or document an exemption. The Manufacturing Machinery and Equipment Exemption from sales tax is available for sales of

machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. The process must meet the requirements of manufacturing or assembling set forth in the Department's rules. In addition, the machinery or equipment must be used primarily (over 50% of the time) in a qualifying manufacturing or assembling process. Exemption certificates must be executed by the purchaser and submitted to the retailer. See 86 Ill. Adm. Code 130.330(g). Form ST-587, Machinery and Equipment Exemption Certificate, may be used to document the Manufacturing Machinery and Equipment exemption.

In the context of sales to contractors who will incorporate qualifying machinery and equipment into real estate as part of a construction contract, purchasing contractors should provide their sellers with certifications that the machinery or equipment will be transferred to a manufacturer as manufacturing machinery or equipment in the performance of a construction contract for that manufacturer. Purchasing contractors should include the manufacturer's name and registration number to claim the exemption. The equipment must also meet the requirements of exempt machinery or equipment set forth in the Department's rules. As a general proposition, purchasers of equipment to be used primarily in the manufacture of food products for sale, for example, cheese, bread or frozen dinners, can claim the exemption because the food processing constitutes the manufacturing or assembling of personal property. Section 130.330(d)(4)(H) of the Department's administrative rules provides that "[t]he use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process" will generally not be considered to be manufacturing. Refrigeration machinery and equipment that is used to maintain the proper safe temperature for a food processing operation may qualify for the exemption. Refrigeration machinery and equipment that is used by non-manufacturers, such as wholesale food and produce distributors in order to maintain the temperature of products purchased for resale, do not qualify for the exemption.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

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