

The sale of certain types of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. See 35 ILCS 120/2-5(2). (This is a GIL.)

July 30, 2010

Dear Xxxxx:

This letter is in response to your letter we received June 28, 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:

We are looking for someone to talk to about Sale [sic] Tax on farm improvement. We have tried calling all of your number [sic] and have tried talking to an agent but no one can help us or we can't get thru. Can you please have someone call us so we can have our questions answered.

DEPARTMENT'S RESPONSE:

Based upon the limited amount of information provided in your letter, we were unable to determine whether you were asking about farming operations or improvements to farm land. However, although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful.

Farm Machinery & Equipment

In general, the Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

In certain cases, the sale of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. Production agriculture is defined under the Retailers' Occupation Tax Act as "the raising of or propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. Production Agriculture also means animal husbandry, floriculture, aquaculture, horticulture, and viticulture." See 35 ILCS 120/2-35.

Under 86 Ill. Adm. Code 130.305 "Farm Machinery and Equipment", Illinois sales tax does not apply to the sale of machinery and equipment, both new and used and including that manufactured on special order, used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs. The sale of individual replacement parts for such machinery and equipment is also exempt. In order to obtain the exemption, the purchaser must certify to the use primarily in production agriculture of the equipment or machinery. See Section 130.305(a).

Machinery means major mechanical machines or machine components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. Machinery would include such things as tractors, combines, balers, irrigation equipment and cattle and poultry feeders. Improvements to real estate such as fences, barns, roads, grain bins, silos and confinement buildings are not considered exempt farm machinery.

Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture. Although equipment does not include ordinary building materials affixed permanently to real estate, certain items of equipment can qualify for the exemption even though they are installed as realty improvements. Such items of equipment include, but are not limited to, farrowing crates, gestation stalls, poultry cages, portable panels for confinement facilities and flooring used in conjunction with waste disposal machinery. In addition, note that other items such as cattle chutes and crowding tubs may be exempt sales so long as these items are portable and not sold to be affixed to real estate, inside or outside of farm structures.

Construction Contractors

Construction contractors, as defined in 86 Ill. Adm. Code 130.1940, that make improvements to real estate by taking materials off the market and permanently affixing them to real estate owe Use Tax on the cost price of those materials. See 86 Ill. Adm. Code 130.2075. Those construction contractors do not incur Retailers' Occupation Tax liability when they permanently affix tangible personal property to real estate. In addition, construction contractors incur no sales tax liability on their receipts from labor or materials furnished in the performance of construction contracts. See 130.1940(c). Note, you may want to review some of the letters found on the Department's website, which is listed below, such as ST 10-0033-GIL.

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,

Debra M. Boggess
Associate Counsel