

Even though sales may be at retail, the Illinois Retailers' Occupation Tax does not apply to farm machinery and equipment, both new and used, including that manufactured on special order, certified by the purchaser to be used primarily in production agriculture or State or federal agricultural programs. See 86 Ill. Adm. Code 130.305. (This is a GIL.)

September 30, 2010

Dear Xxxxx:

This letter is in response to your letter dated August 3, 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](http://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 an Illinois Contractor that builds grain elevators. Attached is a list of the (21) common components of a grain elevator. We perform contracts in several states throughout the country. Materials are purchased in the State of Illinois and also other States. We also perform repair and maintenance services. In addition, we manufacture (fabricate) some of the steel components installed as part of the construction contract.

We understand that, a grain elevator is classified as Real Estate, therefore as a grain elevator construction contractor we should pay sales tax to all of our vendors (where possible) including on 'equipment' that we incorporate into the construction project. We further understand that if we do not pay sales tax to a vendor that we should pay a use tax on the item or charge and pay the retail sales tax if it is sold to a customer.

In addition, we understand that when we quote a contract job to our prospective customer, we can show on our quotes 'sales tax reimbursement' as a separate item or include the sales tax along with our mark up on the materials portion of the quote and we can bill our customers being careful to either show no sales tax or a 'sales tax reimbursement' which can be no greater than what we have either paid to our vendors or as a use tax to the Illinois Department of Revenue.

We are requesting a ruling as to the proper purchases sales/use tax treatment of our Grain Storage tanks and related grain handling equipment. We would be glad to provide pictures to explain the common components of the grain storage facility.

Thank you for your help in this matter.

Your Attachment reads as follows:

Key to the most common Components of a Grain Elevator.

1. Receiving Pit for truck unload.
2. Building to cover receiving pit.
3. Receiving conveyor.
4. Bucket Elevator to elevate grain.
5. Grain Distributor.
6. Grain Spouting.
7. Grain Conveyor to grain bins.
8. Truss & Catwalk to support grain conveyor.
9. Tower to support truss & catwalk.
10. Support Tower for bucket elevator and possibly for supporting truss & conveyor.
11. Grain Dryer.
12. Grain Storage Bin with foundation.
13. Grain Cleaner.
14. Fabricated Transitions.
15. Dust Control System.
16. Bin for grain screenings.
17. Fans for grain aeration system.
18. Bulk Weigher for weighing grain in rapid rail loading operations.
19. Grain Sweep used in final clean out of bin – Inside bin, not visible in photo.
20. Gates used in controlling the flow of grain.
21. Temperature System – normally suspended from roof rafters inside the bin, not visible in photo, allows for remote reading of grain temperature.

#### **DEPARTMENT'S RESPONSE:**

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful.

Even though sales may be at retail, the Illinois Retailers' Occupation Tax (i.e. sales tax) does not apply to farm machinery and equipment, both new and used, including that manufactured on special order, certified by the purchaser to be used primarily in production agriculture or State or federal agricultural programs. Machinery means major mechanical machines or major components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. New or used repair or replacement parts, necessary for the operation of the machine used in production agriculture or in State or Federal agricultural programs, qualify for the exemption. Please refer to 86 Ill. Adm. Code 130.305, which can be accessed on the Department's website.

Your letter inquires about grain bins and several bin accessories and related items. Please note that Subsection 130.305(i) states that "[f]arm machinery would include tractors, combines, balers, irrigation equipment, cattle, and poultry feeders, but not improvements to real estate such as

fences, barns, roads, grain bins, silos and confinement buildings . . . Certain machines qualify for the exemption if purchased by farmers directly from retailers, even though they are installed as realty improvements. Such machines include but are not limited to augers, grain dryers (heaters and fans), . . .”

Therefore, building materials such as concrete and steel panels that are converted into real estate such as grain bins do not qualify for the exemption. However, certain equipment used in conjunction with grain bins such as dryers, blowers, and augers can qualify for the exemption if used primarily in production agriculture. Components of a grain drying system attached to the grain bin such as temperature monitors, grain spreaders and grain level indicators would be exempt if sold for use in production agriculture. By contrast, for example, roof vents would be taxable as a common building material. Additionally, supplies are not exempt, 86 Ill. Adm. Code 130.305(k).

Note, the definition of production agriculture as set out in the Department’s regulation at 86 Ill. Adm. Code 130.305(b) and (f) with respect to crops covers production activities that end with the harvesting and drying of crops on the producer’s farm. Therefore, sales of grain bin drying system components to private or cooperative grain elevators or other businesses such as food processors would not be eligible for the farm machinery and equipment exemption. Similarly, grain cleaners would be exempt if used by a producer on his farm in production agriculture, but if used by an off-farm business after the production of the crop, the exemption would not apply.

Please be advised persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. This would include the construction of grain bins. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate, G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d 180 (1961). See the Department’s regulation at 86 Ill. Adm. Code 130.1940.

When the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real estate in finished form, the tax base is what such construction contractor pays for the item. Construction contractors should pay tax to their Illinois registered suppliers on building materials they will incorporate into real estate. If such materials are purchased without paying tax, such as from unregistered out-of-State suppliers, the purchasing contractors must self-assess and pay the Use Tax directly to this Department. Further, when the construction contractor/installer (whether he is the prime contractor or a subcontractor) is also the manufacturer of the finished item that he will incorporate into real estate for his customer, the tax base is what such construction contractor pays for the materials that he incorporates into such finished item, plus whatever such construction contractor may pay for nails, screws and other items of tangible personal property that he buys and incorporates into real estate for his customer in the course of making the installation of the finished item. See the Department’s regulation at 86 Ill. Adm. Code 130.2075(a)(2) of the Department's regulations.

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

Very truly yours,

Debra M. Boggess  
Associate Counsel

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