

This letter discusses the exemption under the Gas Use Tax Law for business enterprises located in enterprise zones certified by the Department of Commerce and Economic Opportunity. See 35 ILCS 173/5-50. (This is a GIL.)

April 6, 2011

Dear Xxxxx:

This letter is in response to your letter dated February 22, 2011, 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:

The purpose of this letter is to obtain clarification of the allowable exemption available to Illinois businesses located within an enterprise zone that purchase natural gas from out of state [sic] suppliers. The exemption I am referring to is listed in the Allowable Exemptions found at the IL Dept of Revenue website <http://tax.illinois.gov/Businesses/TaxInformation/Excise/gasuse.htm>. The Dept of Revenue website lists the six allowable exemptions for Gas Use Tax as:

1. used by governmental bodies or entities operated and organized exclusively for charitable, religious, or educational purposes who have been issued a tax exemption identification number by IDOR
2. used in the production of electric energy. This does not include gas used in the general maintenance or heating of an electric energy production facility or other structures.
3. used in petroleum refinery operations.
4. used in liquefaction and fractionation processes that produce value-added natural gas by-products for resale.
5. used in the production of anhydrous ammonia and downstream nitrogen fertilizer products for resale.
6. used by a business located in an enterprise zone.

COMPANY purchases all of our natural gas from out of state [sic] suppliers. This natural gas is almost entirely used in either the production of anhydrous ammonia or in the liquefaction and fractionation processes that produce natural gas by-products for resale and therefore exempt under #4 and #5 above. COMPANY does use a small amount of natural gas for heating purposes in administrative and other buildings that are not used for production purposes. We are questioning if we are required to pay gas use tax on this natural gas used for heating purposes.

COMPANY is located within an enterprise zone, and therefore the natural gas used for heating purposes appears to be exempt under #6 above (as would all the natural gas we purchase). However when reviewing enterprise zone guidelines, they appear to state that a business in an enterprise zone is only exempt from utility taxes if certain job creation/retention criteria are met. COMPANY does not meet the job creation/retention criteria.

We would appreciate clarification regarding whether the natural gas we purchase from out of state [sic] vendors is exempt solely due to COMPANY being located in an enterprise zone, or if additional job creation/retention criteria apply.

DEPARTMENT'S RESPONSE:

The Gas Use Tax Law imposes a tax on the privilege of using in this State gas obtained in a purchase of out-of-state gas at the rate of 2.4 cents per therm or 5% of the purchase price for the billing period, whichever is the lower rate. See 35 ILCS 173/5-10 and 86 Ill. Adm. Code 471.105. Section 5-10 of the Gas Use Tax Law provides that the tax does not apply to gas used by business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Economic Opportunity.

One of the exemptions from Gas Use Tax provided in Section 5-50 of the Gas Use Tax Law is for gas used by business enterprises located in an enterprise zone certified by the Department of Commerce and Economic Opportunity pursuant to the Illinois Enterprise Zone Act. 35 ILCS 173/5-50. As the statutory language provides, the business enterprise need only be located in an enterprise zone certified by the Department of Commerce and Economic Opportunity to claim the exemption. The business itself does not need to be certified by the Department of Commerce and Economic Opportunity. However, the use of gas by business enterprises under that exemption does not include gas that is used for any residential purpose. See 86 Ill. Adm. Code 1471.125(a)(1). Please note that this exemption is limited to the Gas Use Tax Law and does not apply to liabilities incurred under the Gas Revenue Tax Act.

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

RSW:msk