

Farm chemicals qualify for sales tax exemptions pursuant to 86 Ill. Adm. Code 130.1955 (This is a GIL.)

August 19, 2011

Dear Xxxxx:

This letter is in response to your letter dated July 27, 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:

I am writing on behalf of COMPANY. Our company sells an assortment of chemicals used by dairy farmers located in WI and IL. Soaps, acids, sanitizers, teat dips, etc. are used to properly care for animals, as well as, sanitize facilities and equipment during milk production.

Traditionally, COMPANY charges sales tax to IL farmers who purchase chemicals from our service. Recently, some farmers have indicated such chemical sales are tax exempt. Further, the farmers noted purchasing the same or similar products at local 'big box' retailers who do not charge sales tax on these products.

I contacted the IL Department of Revenue business hotline twice for clarification. I spoke to 2 different agents who both felt chemicals used by dairy farmers are non-taxable. The references these agents cited [sic] are as follows:

- 1.) IL Department of Revenue Regulations, Title 86: Revenue, Part 130: Retailers' Occupation Tax, Section 130.1955: Farm Chemicals, which states:
 - a.) *Effective October 1, 1975, vendors of farm chemicals are exempt from Retailers' Occupation Tax on their receipts from such sales.*

b.) *Farm chemicals include any chemical product used in production agriculture, the products of which are to be sold, or in the production of care of animals that are to be sold or the products of which are to be sold. Examples of exempted items are stock sprays, disinfectants and the like, stock tonics, serums, vaccines, poultry remedies and other medicinal preparations and conditioners, water purifying products, insecticides, weed killers and the like. (For a definition of production agriculture, see Section 2-35 of the Act.)*

2.) 35 ILCS 120/2-35 Retailers' Occupation Tax Act, Section 2-35, Production Agriculture, which states:

For the purposes of this Act, 'production agriculture' means the raising of or the 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. (Source: P.A. 91-51, eff. 6-30-99.)

I agree with the opinions of both agents. Dairy farmers are not identified specifically, but the language in these references can be interpreted to include them. Generally speaking,

- dairy farmers utilize farm chemicals in the production of milk
- dairy farmers utilize farm chemicals to prepare and care for the animals used to produce milk
- soaps, acids, sanitizers and the like would qualify as disinfectants
- animal care products like teat dips and others are used for medicinal purposes, as well as, conditioning the animal during milk production
- dairy cows are a form of livestock
- dairy cows are raised for the purpose of milk production
- milk is produced with the intent to sell for human consumption

Regardless, I am reluctant to stop charging sales tax on these items based on an informal interpretation. Thus, I ask that you review these regulations, consider my arguments, and provide a formal interpretation of the law as it applies to chemical sales to dairy farmers. If the tax is due, then COMPANY will need to educate our customers and sell harder. If the tax is not due, then COMPANY can stop charging our customers with confidence.

Thank you for your attention to my request. I await your reply.

DEPARTMENT'S RESPONSE:

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. As you pointed out in your letter, Illinois provides an exemption for farm chemicals. Specifically, the Department's regulation at 86 Ill. Adm. Code 130.1955 is the regulation that explains the exemption afforded farm chemicals. This regulation provides examples of the kinds of farm chemicals that qualify for the exemption. In general, farm chemicals include chemical products used in production agriculture, the products of which are to be sold, or in the production or care of animals that are to be sold or the products of which are to be sold.

"Production agriculture" means the raising of or the 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. 35 ILCS 120/2-35. Thus, the raising of dairy cows for the production of milk that is to be sold for human consumption as a food product would qualify as production agriculture.

This exemption is more restricted than it may appear. For example, chemicals such as animal disinfectants can only qualify for the exemption if they are applied directly to livestock, either externally or internally. Chemicals and disinfectants used for general farm maintenance or to clean milking machines and pipe lines do not qualify for the farm chemical 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,

Debra M. Boggess
Associate Counsel

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