

The pollution control exemption expired in July 1, 2003. See, 86 Ill. Adm. Code 130.335(a). (This is a GIL.)

November 30, 2011

Dear Xxxxx:

This letter is in response to your letter dated October 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:

This is to advise you that we are counsel for CORPORATION and pursuant to Section 1200.110, request a private letter ruling regarding a sales tax exemption for the purchase of a pollution control facility purchased and brought into the State of Illinois prior to 2003.

CORPORATION is an environmental response contractor. One of the environmental cleaning services provided by CORPORATION involves the use of an industrial vacuum loader vehicle. These are built for clean up and recovery of a wide range of hazardous materials, including solids, powders, liquids, slurries, and sludge. The sole purpose is environmental response clean-up services.

On 1999, CORPORATION purchased an industrial vacuum loader from ABC located in CITY, STATE. The purchase price for the chassis and module of this industrial vacuum loader was \$\$\$. A copy of the purchase invoice is enclosed. The industrial vacuum loader was delivered to CORPORATION on 1999.

CORPORATION did not pay sales taxes on the purchase of this industrial vacuum loader. In 1999, the purchase of a pollution control facility was not considered a purchase, use or sale of tangible personal property under Illinois law and was thus exempt from the retailer's [sic] occupation tax.

35 ILCS 120/ Retailers' Occupation Tax Act.

Sec. 1a. 'Pollution control facilities' means any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term 'air pollution' or 'water pollution' is defined in the ' Environmental Protection Act', enacted by the 76th General Assembly, or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property.

Until July 1, 2003, the purchase, employment and transfer of such tangible personal property as pollution control facilities is not a purchase, use or sale of tangible personal property. P.A. 93-24 eff. 6-20-03. (Emphasis added)

At the time of delivery, ABC provided to CORPORATION a Certificate of Origin. A copy of that Certificate of Origin dated 1999 is enclosed. CORPORATION believed that the Certificate of Origin was sufficient to constitute title in the State of Illinois. Therefore, at the time the vehicle was brought into the State of Illinois in August, 1999, no title was sought. Illinois sales taxes were not paid on this purchase.

In 1999, CORPORATION notified the Secretary of State's office of this purchase and applied for license plates. They then received apportioned plates from the Secretary of State through the use of this Certificate of Origin, which only bolstered their belief that the vehicle information was properly documented with the State of Illinois. The invoice for the apportioned plates is dated 1999, showing that CORPORATION was disclosing to a State Agency that this vehicle was being brought into the State of Illinois. CORPORATION paid the amount due to the State for those plates and has continued to make payments on those plates annually.

CORPORATION is now seeking to sell this vehicle and has learned that a title is necessary. CORPORATION was informed that upon securing a title it will have to now pay sales taxes and penalties – even though it was an exempt purchase – because they did not seek the exemption at the time of purchase.

We believe that this would be an inaccurate application of the law because the exemption applied to pollution control facility purchases made up until June 2003.

CORPORATION submits that under the statute there are two questions which must be answered: 1) did this vehicle qualify as a pollution control facility under the statute and 2) was the purchase made prior to 2003?

As for the first question, the industrial vacuum loader clearly qualifies under the statute as a pollution control facility. These industrial vacuum loaders have the design specifications and equipment necessary for proper removal and hazardous spills. A copy of the specifications is enclosed. Environmental response is actually the business of CORPORATION, which was performing the type of work encouraged and contemplated by the legislature in enacting the statute.

We are also enclosing an Affidavit of PERSON of CORPORATION. PERSON is the individual employed by CORPORATION with the most knowledge regarding the use of the industrial vacuum loader. The Affidavit attests to the fact that the sole purpose for this industrial vacuum loader is for cleanup efforts of hazardous materials which may pollute the air, water and ground.

This industrial vacuum truck was used, for example, when XYZ had a major break requiring a vacuuming of the spill. As an environmental response contractor, CORPORATION was contacted and was the first on site with this industrial vacuum which was then used to vacuum the spill so as to prevent hazardous pollution to the soil.

The legislature intended to encourage diverse means for reducing pollution through the use of tax exemptions. *Columbia Quarry Company v. Dept. of Revenue of the State of Illinois*, 506 N.E.2d 795; *American Welding Supply v. Dept. of Revenue*, 106 Ill. App.3d 93, 435 N.E.2d 761 (1982).

The second question is also answered in the affirmative. It is undisputed that this sale took place prior to June 30, 2003. The invoice is dated 1999, and the Certificate of Origin is dated 1999. The exemption applied to purchases through June, 2003.

While an RUT-25 form was mistakenly not filed, which would have clearly set forth the applicable exemption, it is clear from the conduct of CORPORATION in applying for license plates that at all times it attempted to comply with all requirements of the State, and there is no evidence of any effort to evade payment to the Illinois Department of Revenue or the Office of the Secretary of State for any fees or taxes due and owing.

CORPORATION is now seeking to sell this vehicle and needs to have it titled. The legislature intended for a vehicle purchased and brought into the State of Illinois prior to 2003 to be exempt from paying sales tax when they are providing the benefit to the pollution control facility. It is in furtherance of the intention of the legislature that this vehicle, the pollution control facility, which was purchased and brought into the State of Illinois prior to June 2003, be extended that very exemption as all other pollution control facilities and qualifying vehicles were at that time.

We are requesting that a letter ruling be issued that the sale of this pollution control facility be deemed exempt and that there be no penalty or interest since no tax would have been owed at that time.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject to the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department declines to issue a Private Letter Ruling since its regulations are dispositive of the subject of your request.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3.

Sales of new vehicles are subject to sales tax based on the gross receipts from the sale. Under 86 Ill. Adm. Code 130.425, the value of, or the credit given for a trade-in would not be counted as gross receipts. Any tax due would be based upon the gross receipts received in payment for the vehicle. Form RUT-25, Use Tax Return, is used to remit Use Tax to the Department if a new or used motor vehicle, watercraft, or aircraft is purchased from an out-of-State retailer. This form is required to be filed even if an exemption from the tax is available.

The pollution control facilities sales tax exemption contained in Section 1a of the Retailers' Occupation Tax Act was, until July 1, 2003, available for "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term 'pollution' is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid, gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property". 86 Ill. Adm. Code 130.335(a). Thus, sales of qualifying pollution control facilities made through June 30, 2003 would be exempt from Illinois sales tax. The Department has determined that certain industrial vacuum loader vehicles that are an integrated system that could not be separated and whose primary purpose is to recover harmful releases and abate pollution in vessels, tanks, pits, ponds, and waste water treatment facilities (that may be similar to the one in your letter) qualified for the pollution control facilities 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,

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Associate Counsel

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Enc.