

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. (This is a PLR).

March 30, 2012

Dear Xxxxx:

This letter is in response to your letter received in this office on January 17, 2012 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to BUSINESS, formerly known as ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither BUSINESS nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

BUSINESS is a CHEMICAL PLANT company that produces CHEMICAL as well as upgraded CHEMICAL products. We are currently in the planning stages of installing a new CHEMICAL storage tank. This tank will have a # ton capacity and sit on a concrete foundation.

The intent of this letter is to first determine if the new storage tank should be classified as manufacturing machinery and equipment and therefor qualify as being sales tax exempt under *Illinois Department of Revenue Title 86 Section 130.330 Manufacturing Machinery and Equipment*. Second, since the materials [sic] for the new storage tank are to be purchased and constructed by a contractor, we need to determine if the sales tax exemption can be passed thru to the contractor.

Our manufacturing process results in the production of CHEMICAL in a gaseous state. In order to store and sell the CHEMICAL, it has to be converted into a liquid. This transition from a gas to a liquid is done by lowering the temperature of the gas to a temperature -xx F by passing the gas thru a series of compressors and condensers. Next, the liquid CHEMICAL goes into the storage tank. The storage tank continues to cool the CHEMICAL in order to maintain it at -xx F. Maintaining a temperature of -xx F is essential to maintaining the CHEMICAL in a liquid state. Otherwise it reverts back to a gas..

Does the storage tank qualify as Manufacturing Machinery & Equipment: We believe the new storage tank qualifies as manufacturing machinery and equipment due the guidance provided by the state in the General Information Letter , *ST-01-0192-GIL 9/24/2001 MANUFACTURING MACHINERY AND EQUIPMENT*. In this letter a food processing company describes its post-production process to freeze and store their product. First, they use a series of freezers to lower the product to the appropriate temperature (similar to the process performed by our compressors and condensers), next the frozen product is placed into specially designed deep freezers to continue preservation of the products until the time they are sold (similar to the function performed by our storage tank).

In this GIL, the state ruled that the specially designed deep freezers qualify as production machinery and equipment as they are used to maintain the product in its frozen condition. Accordingly, we believe our new storage tank qualifies as production machinery and equipment as it performs the function of maintaining the temperature of the CHEMICAL at a sub-zero temperature.

We also believe our position is further supported by *ST 93-0121 – 03/31/1993 MANUFACTURING MACHINERY EQUIPMENT* which states:

A refrigeration or freezer facility maintained at a specific temperature which is required in order to preserve a manufactured product, can qualify for the Manufacturing Machinery and Equipment exemption.

Can the sales tax exemption be used by the storage tank contractor: Under *Title 86 Part 130 Section 140.330, [sic] Section g, paragraph 4* it states:

4) In the case of a vendor who makes sales of qualifying machinery or equipment to a contractor who will incorporate it into real estate so that he, the contractor, would be the taxable user (see Sections 130.1940 and 130.2075 of this Part), the purchasing contractor should provide the vendor with a certification that the machinery or equipment will be transferred to a manufacturer as manufacturing machinery or equipment in the performance of a construction contract for the manufacturer. The purchasing contractor should include the manufacturer's name and registration number on the certification when claiming the exemption.

Under this guidance, we feel that by providing our contractor with a certification statement that includes our registration number, and requiring our contractor to provide to the materials vendors a certification of their own, which will include our name and registration number, we will meet the above requirement. By doing this, the contractor will avoid having to pay sales tax on the purchases of the construction materials, and therefor will not have to pass on those costs to us.

In your supplemental letter of January 19, 2012, you have stated as follows:

This letter is to provide additional support for BUSINESS's position described in the previously sent letter requesting assistance in the classifying as manufacturing machinery and equipment, a new CHEMICAL storage tank we are planning on constructing. Proper classification of this item is necessary in order for us to perform the proper treatment for sales tax purposes. In addition to the support provided in our previous letter, under the heading **Does the storage tank qualify as Manufacturing Machinery & Equipment**, we also believe the following items provide further support for classifying the new storage tank as manufacturing machinery and equipment:

1. In order for CHEMICAL to be sold it needs to meet a specific requirement for the amount of water the product is made up of. Prior to being put into the storage tank, the CHEMICAL falls below this specification, and water is added to the product while it is in the storage tank.
2. CHEMICAL changes from a liquid to a gas at a temperature of -xx F. During the CHEMICAL loading process, the temperature of some of the CHEMICAL raises to a temperature higher than -xx F, therefore changing this CHEMICAL from a liquid to a gas. This gaseous CHEMICAL cannot be loaded in this form, therefore it is siphoned off and put back into the storage tank to be cooled down to a liquid state once again.
3. Our CHEMICAL production process utilizes three very large compressors. On occasion, due to either market conditions or mechanical failure or maintenance, we will only be able to run two out of the three compressors. During these periods, our plant does not produce enough CHEMICAL to provide for production of the additional upgrade products that we produce with CHEMICAL. Therefore, in order to continue to produce our upgraded CHEMICAL products, we utilize CHEMICAL in the storage tank. Without having the storage tanks, when only running two out of the three compressors, we would not be able produce [sic] any additional products except for CHEMICAL.

We believe these three points provide additional support for classifying the new storage tank as manufacturing machinery and equipment and will therefore be exempt from sales tax under *Illinois Department of Revenue Title 86 Section 130.330 Manufacturing Machinery and Equipment*.

In your letter dated March 6, 2012, you have provided the following additional supplemental information:

This letter is intended to provide supplemental information in conjunction with the previous letter received by the Illinois Department of Revenue on 1/17/2012 and also the subsequent letter dated 1/19/2012 regarding classifying a new CHEMICAL storage tank we are planning on constructing as manufacturing machinery and equipment. This supplemental information is being sent in order to fulfill the necessary requirements to obtain a private letter ruling under *Title 02 Part 1200 Section 1200.110 Public Information, Rulemaking and Organization*.

The following items are provided in order to comply with section b) of the above ruling:

- 1) No further information is being provided under requirement b) 1) as all statements and facts pertinent to the request were previously provided in the letter received by the Illinois Department of Revenue on 1/17/2012 and also the subsequent letter dated 1/19/2012.
- 2) See attachment A accompanying this letter for the preliminary contract between BUSINESS and COMPANY.
- 3) The state of Illinois is currently conducting a sales tax audit of our company covering the period from Jan. 1, 2009 thru June 30, 2011.
- 4) The Illinois Department of Revenue has not previously ruled on this issue or a similar issue for BUSINESS, nor has this issue or a similar issue been previously submitted and subsequently withdrawn.
- 5) Authorities relevant to our conclusion include the two GIL's referenced in our original letter as well as the following:
 - a. *Title 86 Part 130 Section 130.330 b) Manufacturing and Assembling* – Our process can be classified as manufacturing as we use gas in order to produce CHEMICAL as well as upgraded CHEMICAL products such as UPGRADE PRODUCTS which is a byproduct of the CHEMICAL production process.
 - b. *Title 86 Part 130 Section 130.330 c) Machinery and Equipment* — We believe the new tank, while performing a storage function, qualifies as machinery due to also performing the following processes necessary to produce a finished product that is able to be either sold or upgraded to another type of product.

First, our manufacturing process results in the production of CHEMICAL in a gaseous state. In order to store and sell the CHEMICAL, it has to be converted into a liquid. This transition from a gas to a liquid is done by lowering the temperature of the gas to a temperature -xx⁰ F by passing the gas thru a series of compressors and condensers. Next, the liquid CHEMICAL goes into the storage tank. The storage tank continues to cool the CHEMICAL in order to maintain it at -xx⁰ F. Maintaining a temperature of -xx⁰ F is essential to maintaining the CHEMICAL in a liquid state. Otherwise it reverts back to a gas.

Second, in order for CHEMICAL to be sold it needs to meet a specific requirement for the amount of water the product is made up of. Prior to being put into the storage tank, the CHEMICAL falls below this specification, and water is added to the product while it is in the storage tank.

Third, CHEMICAL changes from a liquid to a gas at a temperature of -xx⁰ F. During the CHEMICAL loading process, the temperature of some of the CHEMICAL raises to a temperature higher than -xx⁰ F, changing this CHEMICAL from a liquid to a gas. This gaseous CHEMICAL cannot be loaded in this form, therefore it is siphoned off and put back into the storage tank to be cooled down to a liquid state once again.

Fourth, our CHEMICAL production process utilizes three very large compressors. On occasion, due to either market conditions or mechanical failure or maintenance, we will only be able to run two out of the three compressors. During these periods, our plant does not produce enough CHEMICAL to provide for production of the additional upgrade products that we produce with CHEMICAL. Therefore, in order to continue to produce our upgraded CHEMICAL products, we utilize CHEMICAL in the storage tank. Without having the storage tanks, when only running two out of the three compressors, we would not be able produce [sic] any additional products except for CHEMICAL.

- c. *Title 86 Part 130 Section 130.330 d) Primary Use* – We believe the tank meets the primary use requirement as our plant is in production twenty-four hours a day, therefore the CHEMICAL tank continuously performs the processes outlined in section 5) b. above
- 6) Authorities contrary to our conclusion include the following:
- a. *Title 86 Part 130 Section 130.330 d) 4)* – This ruling states that machinery used to store finished products after completion of the production cycle will generally not be considered to be manufacturing.

We believe the above items, in consideration with our previous letters fulfill the requirements to obtain a private letter ruling on this matter.

DEPARTMENT'S RESPONSE:

Storage Tank

Under the Retailers' Occupation Tax Act and Use Tax Act, machinery and equipment that will be used by the purchaser primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease, whether the sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, is exempt from Retailers' Occupation Tax and Use Tax. 35 ILCS 120/2-10(14); 105 ILCS 3-5(1). The exemption is also available if the machinery and equipment that will be used by the purchaser primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease is made apart from or as an incident to the seller engaging in a service occupation. See 86 Ill. Adm. Code 140.125(o).

The manufacturing machinery and equipment exemption is extended to machinery and equipment that is used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material or materials into a material with a different form, use, or name. These changes must result from the process in question and be substantial and significant. See Section 130.330(b)(2). A certificate of exemption must be presented to the seller for each transaction where exempt machinery or equipment is purchased. See Section 130.330(g).

Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process. Machinery includes machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. See Section 130.330(c)(2). Further, repair and replacement parts for exempt machinery or equipment are exempt when purchased by the owner of the exempt machinery and equipment, as long as the parts are incorporated into the exempt machinery and equipment. See Section 130.330(c)(2). Servicemen making repairs are governed by the Service Occupation Tax Act which provides an exemption for repair and replacement parts when such parts are incorporated into the exempt machinery and equipment by the servicemen. See 35 ILCS 115/2. The exemption is also available where manufacturers build their own production machinery. Any machine parts purchased to be incorporated into a machine which qualifies for the Manufacturing Machinery and Equipment Exemption will also qualify for the exemption. See Section 130.330(c)(2) and (c)(4).

The manufacturing machinery and equipment exemption does not apply to machinery or equipment used primarily in pre-production activities. Machinery or equipment used primarily to store, convey, handle, or transport materials or parts or sub-assemblies prior to their entrance into the production cycle do not qualify for the manufacturing machinery and equipment exemption. See part (4)(C) of subsection (d) of Section 130.330. In addition, the manufacturing machinery and equipment exemption does not apply to machinery or equipment used primarily in post-production activities. Machinery and equipment used primarily to store, convey, handle, or transport finished articles of tangible personal property to be sold or leased after the production cycle do not qualify for the manufacturing machinery and equipment exemption. Machinery and equipment, such as loaders, conveyors, and transport vehicles used primarily to move finished a product do not qualify for the manufacturing machinery and equipment exemption.

The Department believes that the # ton capacity CHEMICAL storage tank referenced in your letter would qualify for the manufacturing machinery and equipment exemption if it is used primarily (over 50% of the time) to store the CHEMICAL in its liquid state as an integral part of the production process of the CHEMICAL at the plant. Please note that storage tanks or other equipment that are used after production of the CHEMICAL by a distributor or transporter in order to store that product would not qualify for the exemption.

For information regarding what information a contractor should provide when purchasing machinery or equipment or parts to be used to construct machinery or equipment that qualifies for the manufacturing machinery and equipment exemption, see subsection (g) of Section 130.330 of the Department's rules.

Concrete Foundation

For purposes of the manufacturing machinery and equipment exemption, machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment. See Section 130.330(c)(5). The concrete foundation described in your letter is merely being used to house of support the storage tank and would not qualify for the manufacturing machinery and equipment exemption.

You provided the Department with a copy of a Certification of Eligibility for Sales Tax Exemption from the Zone Administrator of the County Enterprise Zone for the installation of a # ton storage tank along with the facility upgrade for production increase in loading capacity. The Department's regulation governing various enterprise zone exemptions is found at 86 Ill. Adm. Code 130.1951. Subsection (d) of this regulation explains the current requirements for persons claiming the enterprise zone building materials exemption. This exemption applies to qualified sales of building

materials to be incorporated into real estate in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction. A "qualified sale" means a sale of building materials that will be incorporated into real estate as part of a building project for which a Certificate of Eligibility for Sales Tax Exemption has been issued by the administrator of the enterprise zone in which the building project is located.

Some examples of the kind of building materials that could qualify include: common building materials such as lumber, bricks, and cement; plumbing systems and components thereof such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners, and water pipes; heating systems and components thereof; electrical systems and components thereof; central air conditioning systems; ventilation systems and components thereof; built-in cabinets; and built-in appliances.

Items that are not physically incorporated into the real estate cannot qualify for the exemption. Examples of this include tools, machinery, equipment, fuel, forms and other items that may be used by a construction contractor at an enterprise zone building site, but are not physically incorporated into the real estate, and free-standing appliances such as stoves and refrigerators that are connected to and operate from a building's electrical or plumbing system but do not become a component of those systems. See 86 Ill. Adm. Code 130.1951(e).

The concrete and other materials used to construct the foundation of the storage tank will qualify for the enterprise zone building materials exemption if the concrete or other materials are incorporated into real estate as part of the building project in that enterprise zone. The contractor who is contractually obligated to incorporate the the concrete or other materials into the real estate as part of the building project in the enterprise zone may purchase the concrete or other materials without incurring tax by providing its supplier with the appropriate documentation. See 86 Ill. Adm. Code 130.1951(d)(4).

A retailer claiming the deduction must have both the Certificate of Eligibility for Sales Tax Exemption and the purchaser's certificate among its books and records in order to document the exemption. Provided that the retailer has properly documented the exemption (and absent any fraud or collusion), if the Department should discover that the purchaser has improperly claimed the exemption, it will look to the purchaser for payment of tax.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton

Chairman, Private Letter Ruling Committee

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