ST 12-0008-PLR 09/28/2012 SALE FOR RESALE

This letter concerns sales for resale. See 86 Ill. Adm. Code 130.1401, *et seq*. and *Dearborn Wholesale Grocers, Inc. v. Whitler*, 82 Ill.2d 471 (1980). (This is a PLR.)

September 28, 2012

Dear:

This letter is in response to your letter dated April 26, 2012, in which you requested a Private Letter Ruling. 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 COMPANY1 (FEIN X) 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 COMPANY1 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:

> We are submitting this request for a Private Letter Ruling ("PLR"), pursuant to the provisions of 2 Ill. Admin. Code § 1200.110 on behalf of our client, COMPANY1, based on previous conversations we have had with you regarding the treatment of certain transactions for purposes of the Illinois Retailers' Occupation Tax ("ROT") and Use Tax.
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> We are seeking a ruling confirming one of the following alternative conclusions:
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> 1. Based on the nature of the materials sold and the specific counterparties to which COMANY1 makes sales, COMPANY1's uranium trading transactions at COMPANY2 are sales of intangible personal property and are not subject to the ROT and use tax imposition statutes; or *alternatively*
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> 2. COMPANY1's uranium trading transactions at COMPANY2 are exempt purchases and sales for resale that do not meet the definition of a "sale at retail" under 35 ILCS 120/1 or a "use" under 35 ILCS 105/2 for ROT and Use Tax purposes. Specifically, COMPANY1 is asking the Illinois Department of Revenue ("Department") to confirm that:
>
>   1. For the tax years ended December 31, 20XX, to present, COMPANY1 is considered a wholesaler in Illinois that is not required to register with the Department in accordance with *Dearborn Wholesale Grocers, Inc.*;[1]

2. For tax years ended December 31, 20XX, and December 31, 20XX, COMPANY1 is considered a wholesaler in Illinois that is not required to register with the Department in accordance with *Illinois Cereal Mills, Inc.*;[2] and

3. For tax years ended December 31, 20XX, and December 31, 20XX, COMPANY1 must report on Form ST-1 and remit tax only with respect to its stable nuclear isotope transactions made during those years with purchasers located in Illinois.

We are requesting these rulings for all open tax periods during which COMPANY1's uranium trading transactions have occurred since COMPANY1 commenced business in Illinois, as well as for all future tax periods in which COMPANY1 will maintain uranium trading operations in Illinois, provided the applicable guidance and facts and circumstances do not change. COMPANY1 is not involved in a pending audit or litigation in Illinois involving the issues raised in this PLR request. To the best of the knowledge of COMPANY1 and COMPANY3, the Department has not previously ruled on these issues for COMPANY1 or other similarly situated taxpayers. COMPANY3 has attached a power of attorney signed by COMPANY1 to this letter with respect to this matter. This PLR request is submitted in connection with a request for Voluntary Disclosure that has already been submitted by COMPANY3 on behalf of COMPANY1.

I. FACTS

COMPANY1's General Business Operations

COMPANY1 is incorporated in STATE1 and is primarily engaged in the business of trading uranium products, including U_3O_8 ("yellowcake"), unenriched uranium hexafluoride ("UF_6"), and low-enriched uranium ("LEU"). COMPANY1 was formed in 19XX. For a number of years, COMPANY1's principal activity was uranium brokerage, supplemented by small amounts of uranium market consulting activities. Starting in 19XX, COMPANY1 began to develop more as a trading business (i.e., a purchaser and seller of uranium for its own account). Uranium trading became the principal business activity for COMPANY1 following the purchase of a stockpile of uranium in 19XX.

COMPANY1's headquarters are located in CITY1, STATE2, and the company maintains no offices or employees in Illinois. COMPANY1's connection with Illinois is by virtue of its ownership of uranium, a commodity that is stored on-site at COMPANY2's nuclear conversion facility located in CITY2, Illinois, and which is recorded as owned by COMPANY1 through a book entry in COMPANY2's records. Through book entry, COMPANY1 holds quantities of yellowcake for the sole purpose of trading with other counterparties in the uranium industry. These counterparties, who also maintain book entry accounts at COMPANY2, are comprised predominantly of other traders or uranium trading divisions of major nuclear power utility companies.

COMPANY1 has already requested and received guidance from the Illinois Department of Revenue ("Department") regarding the Corporation Income and Personal Property Replacement Income Tax treatment of its uranium trading transactions taking place at

COMANY2's CITY2 facility ("income tax PLR").[3] The income tax PLR held that COMPANY1's uranium trading transactions represent intangible property transactions. For purposes of this present PLR request, COMPANY1 would like to incorporate the pertinent facts from that PLR with respect to the discussion of its uranium trading transactions into this request. A copy of that unredacted private letter ruling has been attached.

Specialized Nature of Uranium Trading Industry and Requirement that Uranium Be Processed Further For Industrial Use

COMPANY1's primary activities in Illinois arise from the purchase, storage as inventory for resale, and resale of yellowcake at COMPANY2. COMPANY1's purchases of yellowcake result in a transfer of legal title to COMPANY1 from its counterparties, or, in the case of a sale, from COMPANY1 to its counterparties. Federal law does not authorize COMPANY1 to physically receive, possess, deliver, use or otherwise transfer source yellowcake or uranium byproducts. The legal title to the yellowcake passes in Illinois in these transactions because the yellowcake resides in the physical possession of COMPANY2 in Illinois until it is converted to UF_6 (at which time COMPANY2 generally delivers possession to a fungible allocation of UF_6 to the COMPANY4 enrichment facility in CITY3, STATE3).[4]

It is COMPANY1's understanding that an entity seeking conversion services for yellowcake will maintain title to the UF_6 after the conversion has taken place, until such time as the entity either resells the UF_6 to a third party or seeks enrichment of the UF_6 at COMPANY4's facility, or other comparable enrichment facility. It is COMPANY1's further understanding that entities obtaining enrichment services from COMPANY4 and having title to UF_6 located at COMPANY4's facility generally will transfer title to that material to COMPANY4 during the enrichment process. At the completion of the enrichment process, COMPANY4 transfers title to enriched product, LEU, to the entity and delivers possession of a fungible allocation of LEU to the entity at a fabrication facility in the United States.

COMPANY1's own agreements with COMPANY4 for enrichment services provide for an explicit title transfer during the enrichment process. However, if enrichment of UF_6 is conducted at another enrichment facility (e.g., COMPANY5's enrichment facility in CITY4, STATE4), there may not be an express contractual transfer of title of the UF_6 to the enrichment facility. In all cases, there would be a transfer of possession of the UF_6, and an owner of UF_6 would be unable to identify and trace its particular materials as the UF_6 is commingled together.

COMPANY1 holds the yellowcake that it owns at the COMPANY2 facility as inventory awaiting resale by COMPANY1 to counterparties. COMPANY1 may sell, swap, or trade the yellowcake for other uranium products at different stages of processing that are located in other states or countries. Although these transactions frequently are complex, they are predicated on the physical possession of uranium products remaining with the licensed conversion, enrichment, or fabrication facility that holds or stores the uranium for the titled legal owners.

Conversion of yellowcake into UF_6 at COMPANY1 is the first of many downstream steps required to process yellowcake into a usable nuclear fuel rod. The UF_6 is a factor of production that must undergo several additional industrial processes to produce a nuclear fuel rod. The subsequent enrichment of UF_6 into LEU, and the fabrication of LEU into nuclear fuel rods, occurs at facilities exclusively outside Illinois.

COMPANY1 does not buy or sell nuclear fuel rods. Regardless of whether COMPANY1's sales of yellowcake are made to entities only engaging in trading operations for speculation, or to nuclear power utility purchasers, subsequent industrial processing requires that a party either surrender title or possession to its UF_6 to an enrichment facility. In either scenario, there are necessary subsequent sales of the uranium content (UF_6, LEU, or fabricated uranium fuel) to another downstream party.

Additional COMPANY1 Business Activity in Illinois

In addition to COMPANY1's uranium trading transactions, COMPANY1 sold small quantities of stable nuclear isotopes to customers located throughout the United States during the period covered by the voluntary disclosure agreement. The percentage of COMPANY1's gross receipts attributable to sales of stable nuclear isotopes nationwide as percentage of its total sales for the tax years 20XX, 20XX, 20XX, and 20XX were, respectively, 0.2295%, 0.4219%, 0.2334% and 0.3428%. For the tax years ended December 31, 20XX, and December 31, 20XX, COMPANY1 respectively supplied approximately 4.42% and 0.22% of its total national isotope sales to customers in Illinois (representing 0.01% and 0.0009% of COMPANY1's total national sales in 20XX and 20XX). COMPANY1 did not supply any stable nuclear isotopes to customers in Illinois after July 20XX. Accordingly, for the tax years ended December 31, 20XX, through December 31, 20XX, COMPANY1 had no sales of stable nuclear isotope to Illinois customers. Since the end of the tax year ended December 31, 20XX, COMPANY1 has discontinued this line of business completely.

COMPANY1 at no time maintained a stock of inventory to fulfill customer orders for stable nuclear isotopes. COMPANY1 fulfilled stable nuclear isotope orders from customers by arranging for spot purchases with a distributor. COMPANY1 would make the purchases and then arrange for shipments to the ultimate customers via common carrier. COMPANY1 retained a percentage markup over its cost on these transactions.

COMPANY1's customers for stable nuclear isotopes consisted of operators of nuclear reactors and companies involved in the production of semiconductors. Utility customers use these isotopes as additives to treat water used in operating a nuclear reactor. Other customers use the isotopes in manufacturing products. Unlike COMPANY1's uranium trading transactions, stable nuclear isotopes did not need to be processed further to be commercially usable. There is no active trading of these goods on commercial exchanges. Further, delivery of stable nuclear isotopes to customers took place at the customer's operating facilities and did not take place at a primary uranium trading hub, such as COMPANY2.

COMPANY1's Illinois ROT and Use Tax Compliance

COMPANY1 historically operated under the assumption that its activities in Illinois were not subject to ROT or Use Tax. Consequently, COMPANY1 has not registered to collect and/or remit ROT or Use Tax and has not collected resale certificates relating to its sales activities in Illinois.

COMPANY1 requires clarification on the legal issues relating to its uranium trading transactions to complete its obligations under the Voluntary Disclosure Agreement. Based on the outcome of this PLR, COMPANY1 will file the necessary ROT or Use Tax returns. COMPANY1 anticipates that it will need to report on Form ST-1 and remit tax related to its stable nuclear isotope sales, but not related to its uranium trading transactions (per the legal analysis detailed below). Similarly, because COMPANY1 is no longer engaging in the sale of stable nuclear isotopes, it is not anticipating that it will need to register with the Department for ROT or Use Tax purposes. As discussed earlier, COMPANY1 has already initiated the Voluntary Disclosure process as of the time of this letter.

II. PRIMARY RULING REQUESTED

Receipts from Uranium Trading Transactions in Illinois are Properly Considered Intangible Personal Property Transactions for ROT and Use Tax Purposes

COMPANY1 is seeking a ruling confirming that it is not liable for ROT and Use Tax on its uranium trading transactions that take place at the COMPANY2 facility in Illinois because, consistent with Ill. Priv. Ltr. Rul. No. IT 11-0003-PLR (11/18/2011), COMPANY1's uranium trading transactions are sales of intangible personal property.

III. PRIMARY RULING ANALYSIS

Receipts from Uranium Trading Transactions in Illinois are Properly Considered Intangible Personal Property Transactions for ROT and Use Tax Purposes

Under its imposition statute, ROT "is imposed upon persons engaged in the business of selling at retail tangible personal property."[5] 86 Ill. Admin. Code 130.120(a) clarifies that exempt sales include those receipts from sales "of intangible personal property, such as shares of stocks, bonds, evidences of interest in property, corporate or other franchises and evidences of debt."

It should first be noted that Illinois does not specifically define the term "tangible personal property" in its statutes or regulations.[6] In interpreting whether a given property is either tangible or intangible, Illinois authorities have traditionally looked to the ordinary and popular meanings of the word "tangible."[7] Under this approach, the Illinois Supreme Court has noted that "tangible property" is "[c]orporeal property either real or personal," where "corporeal" means "[o]f the nature of, consisting of, or pertaining to, matter or a material body; physical; bodily; material;-opposed to spiritual or immaterial . . . ."[8] This definition of "tangible" in the context of personal property resurfaced more recently in *Exelon Corp*. v. *Dep't of Revenue*.[9] At issue in *Exelon* was whether

electricity was tangible personal property. The court in *Exelon* reiterated that the term "tangible" means, "[c]apable of being touched; also, perceptible to the touch . . . ."[10] The Department has also provided that a nominal transfer of tangible personal property as part of a broader transfer of intangible rights does not constitute a sale of tangible personal property under the ROT.[11]

As noted earlier, COMPANY1 already has obtained guidance from the Department regarding whether the nature of its uranium trading transactions at COMPANY2 are tangible or intangible property transactions for Corporation Income and Personal Property Replacement Income Tax purposes.[12] In particular, COMPANY1 received guidance confirming that its COMPANY2 uranium trading transactions were to be sourced as sales of intangible property under 35 ILCS 5/304(a)(3)(C-5)(iii). The PLR concludes that "COMPANY1's Illinois business activities are sales of intangible personal property as uranium cannot be physically possessed by trading companies."[13] Although the Department's conclusions in that PLR are not binding with respect to the ROT and Use Tax issues currently presented, its rationale supports the conclusion that the uranium trading transactions in question also are sales of intangible property within the meaning of 86 Ill. Admin. Code 130.120(a).

Under 35 ILCS 5/304(a)(3)(C-5)(iii), items of income derived from intangible personal property are sourced to Illinois if the customer is within the state, provided the taxpayer is a "dealer in the item of intangible personal property within the meaning of Section 475 of the Internal Revenue Code." For a taxpayer to take advantage of those special sourcing rules, not only would the taxpayer necessarily need to be considered a "dealer in intangibles," but also the property being sold necessarily must be intangible personal property.

The core of COMPANY1's operations is that of a trader, and, as a result, the transitory title COMPANY1 takes to yellowcake or UF_6 in Illinois is incidental to the transaction as COMPANY1 is not permitted to take possession of its inventory or use it in any ordinary sense. The transaction is akin to a commodities transaction involving the sale of oil or soybeans on a commercial exchange, in which a title transfer may take place but there is no contemplated delivery. The intangible theory applies with greater force in the context of uranium trading (as compared to other commodities, such as soybeans and crude oil) because purchasers are precluded from obtaining possession of the uranium in its intermediate stages by the Nuclear Regulatory Commission's regulations governing the uranium industry. Accordingly, we submit to the Department that COMPANY1's COMPANY2 uranium trading transactions are sales of intangible personal property for ROT and Use Tax purposes.

If the Department does not agree with the above analysis and primary ruling requested, COMPANY1 respectfully requests that the primary ruling request be withdrawn and that the Department consider the alternative ruling request set forth below.

IV. ALTERNATE RULING REQUESTED

Receipts from Uranium Trading Transactions in Illinois are Exempt Purchases/Sales for Resale

In the event that the Department is not able to confirm the analysis and ruling requested in Section III. above, COMPANY1 alternatively requests that the Department issue a ruling confirming that COMPANY1's uranium trading transactions at COMPANY2 in Illinois are exempt purchases and sales for resale that do not meet the definition of "sale at retail" under 35 ILCS 120/1 or "use" under 35 ILCS 105/2 for ROT and Use Tax purposes. Specifically, COMPANY1 is requesting that the Department to confirm that:

1. For the tax years ended December 31, 20XX, to present, COMPANY1 is considered a wholesaler in Illinois that is not required to register with the Department in accordance with *Dearborn Wholesale Grocers*;[14]

2. For tax years ended December 31, 20XX, and December 31, 20XX, COMPANY1 is considered a wholesaler in Illinois that is not required to register with the Department in accordance with *Illinois Cereal Mills*;[15] and

3. For tax years ended December 31, 20XX, and December 31, 20XX, COMPANY1 must report on Form ST-1 and remit tax only with respect to its stable nuclear isotope transactions made during those years with purchasers located in Illinois.

V. ALTERNATE RULING ANALYSIS

Receipts from Uranium Trading Transactions in Illinois are Exempt Purchases/Sales for Resale

35 ILCS 120/2c and 120/7 collectively operate to impose documentary requirements on taxpayers claiming the resale exemption under the ROT. 35 ILCS 120/2c provides in relevant part, that "[f]ailure to present . . . a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale." 35 ILCS 120/7 alternatively provides that: "It shall be presumed that all sales of tangible personal property are subject to tax . . . until the contrary is established, and the burden of proving that a transaction is not taxable . . . shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable. . . ." The presumption of taxability imposed by 35 ILCS 120/2c may be rebutted using "other evidence that all of the seller's sales are sale for resale, or that a particular sale is a sale for resale."[16]

A taxpayer may additionally avoid 35 ILCS 120/2c altogether by demonstrating that it is a wholesaler, because a wholesaler, by definition, cannot have sales to retail purchasers within the meaning of 35 ILCS 120/2c. The Illinois Supreme Court decision *Dearborn Wholesale Grocers* involved a taxpayer that sold all of its products at wholesale.[17] The Illinois Supreme Court held that the requirements of 35 ILCS 120/2c were inapplicable to taxpayers that make only wholesale sales, and that a wholesaler was not required to obtain resale certificates to document the exempt nature of the wholesale sales. The *Dearborn Wholesale Grocers* line of reasoning extends further to instances in which a taxpayer that is predominantly a wholesaler also has a minute amount of retail sales.[18] In *Illinois Cereal Mills*, the Illinois Supreme Court explained that "[i]t cannot be realistically said that the [taxpayer] was engaged in the business of selling at retail when . . . over 99% of its sales in one of the audit periods were

admittedly wholesale sales; clearly the [taxpayer] is a wholesaler."[19] *Illinois Cereal Mills* was distinguished by *Tri-America Oil Co. v. Dep't of Revenue*.[20] *Tri-America Oil* makes clear that if a person or entity engages in making both wholesale and more than a minute amount of retail sales, the person or entity is required to register under the ROT Act, file monthly tax returns and document the exempt status of their wholesale transactions.[21]

In another PLR issued by the Department, a taxpayer engaging in the sale and trading of yellowcake at the COMPANY2 facility in Illinois was found by the Department to be a wholesaler consistent with *Dearborn Wholesale Grocers*.[22] The rationale supporting this conclusion was that title to the yellowcake passes from the seller to the purchaser prior to the conversion into UF_6, and that the UF_6 must be further processed into LEU before it can be fabricated into nuclear fuel rods at facilities located outside Illinois.[23] This taxpayer had no retail sales.[24]

COMPANY1's uranium trading transactions at COMPANY2 are substantially similar to those of the taxpayer in Ill. Private Ltr. Rul. ST 10-0004-PLR (July 16, 2010). As in that PLR, COMPANY1's activities at COMPANY2 are limited to the purchase, storage, and inventory for sale of yellowcake.[25] At the time a purchase or sale takes place, COMPANY1 takes legal title to the yellowcake. A party operating at COMPANY2 has only two options with respect to its yellowcake inventory; it may convert it into UF_6 or trade it with another party. Any yellowcake that is converted into UF_6 is either traded with another party while still located at COMPANY2, or transported out of Illinois for further enrichment or subsequent trading. Accordingly, by way of industry practice and custom, yellowcake purchased by COMPANY1 must necessarily be for resale, and sales to counterparties must also necessarily be for resale because all later transactions require at least one additional downstream sale or barter of materials.

With respect to the tax years ended December 31, 20XX, to present, COMPANY1 squarely fits under the guidance confirmed by the Department in Ill. Private Ltr. Rul. ST 10-0004-PLR (July 16, 2010). Consequently, COMPANY1 hereby requests that the Department issue a ruling for the tax years ended December 31, 20XX, to the present, that COMPANY1 is not required to be registered with the Department, and is not required to file periodic Forms ST-1 for the relevant time periods.

The difference with respect to COMPANY1's facts and circumstances and the taxpayer in Ill. Private Ltr. Rul. ST 10-0004-PLR (July 16, 2010) is that COMPANY1 had a small amount of stable nuclear isotopes sales during the tax years ended December 31, 20XX, and December 31, 20XX. For those years, COMPANY1 is unlike the taxpayer in Ill. Private Ltr. Rul. ST 10-0004-PLR (July 16, 2010) because COMPANY1 engaged in very limited retail sales. COMPANY1 submits that regardless of these retail sales, its uranium trading transactions nevertheless should be considered exempt sales/purchases for resale in those tax years because *Illinois Cereal Mills* is applicable.

With regard to its retail sales, COMPANY1's sales, like the taxpayer in *Illinois Cereal Mills*, represent significantly less than 1% of COMPANY1's total receipts in all relevant tax years. In particular, the sales of isotopes in Illinois respectively represent only 0.0101% and 0.0009% of all sales in 20XX and 20XX, and did not even exist in tax

years 20XX and 20XX. These percentages are far less than the threshold referenced as not tainting "wholesaler" status in *Illinois Cereal Mills*. Thus, COMPANY1's stable nuclear isotope sales were so insignificant that they should not cause COMPANY1 to be considered a "retailer" under *Illinois Cereal Mills*, and, as a result, COMPANY1 should not be required to collect and remit resale certificates from purchasers to document the resale exemption on its uranium trading transactions. If the Department agrees with this conclusion, COMPANY1 will complete Forms ST-1 for the relevant time periods and submit tax on its stable nuclear isotope sales relating to sales to purchasers in Illinois.

If the Department does not accept COMPANY1's reliance on *Illinois Cereal Mills* and determines that COMPANY1 is a retailer for tax years ended December 31, 20XX, and December 31, 20XX, COMPANY1 requests that the Department consider the assertions in this PLR, and those in Ill. Private Ltr. Rul. ST 10-0004-PLR (July 16, 2010) regarding the industry custom of yellowcake sales and trades at COMPANY2, be deemed to be sufficient "other evidence" under 35 ILCS 120/2c and 120/7. Ill. Private Ltr. Rul. ST 10-0004-PLR (July 16, 2010) stands for the proposition that evidence of industry custom may be used to support a finding that the taxpayer is a wholesaler. Implicit in the conclusion that the taxpayer in Ill. Private Ltr. Rul. ST 10-0004-PLR (July 16, 2010) was a wholesaler is the premise that all of that taxpayer's yellowcake sales and trading transactions were exempt sales for resale. Thus, the same evidence of industry custom presented by COMPANY1 in the instant case should be sufficient "other evidence" to establish that the same types of transactions are also for resale under 35 ILCS 120/2c.

In particular, it would be inequitable for the Department to require that COMPANY1 produce resale certificates with respect to individual uranium trading transactions in light of the guidance issued in Ill. Private Ltr. Rul. No. ST 10-0004-PLR (July 16, 2010). In that PLR, the Department confirms that a trader engaged in the same kind of transactions as COMPANY1 is not required to register for ROT and Use Tax or document its sales and purchases of yellowcake through the retention and issuance of resale certificates. Through reliance on this PLR by other industry participants, it is now administratively impossible for COMPANY1 to retroactively or prospectively obtain valid resale certificates from such unregistered counterparties.

If the Department needs additional information to support COMPANY1's assertions in this PLR, COMPANY1 would be willing to provide copies of contracts for enrichment services to support the assertion that its purchases/sales of uranium held at COMPANY2 must be resold as a matter of the ordinary course of the business of uranium enrichment. If the Department agrees that COMPANY1's uranium trading transactions are adequately documented exempt sales for resale, COMPANY1 will register with the Department and report its gross transactions in Illinois for tax years December 31, 20XX, and December 31, 20XX, on Forms ST-1, but indicate that the uranium trading transactions are exempt sales for resale.

VI. CONCLUSION

For the reasons discussed, we respectfully request that the Department provide either of the rulings requested. To clarify, if the Department agrees with this description of the

issues, COMPANY1 only will report and remit ROT (plus any other necessary payments) relating to its stable nuclear isotope sales in Illinois on the Forms ST-1 required to be filed pursuant to its Voluntary Disclosure Agreement with the Department. In the event the Department does not agree with the positions requested by the taxpayer, we request that the Department contact us, prior to issuing a contrary ruling, to discuss the issue further and possibly withdraw the request without a ruling. We also request that the names of the relevant parties to the transactions listed be redacted in the event that any final decision regarding this PLR is published.

If you have any questions regarding the information contained within this PLR request, or require additional information before making a decision, please call me at XX.

DEPARTMENT'S RULING:

If a person or entity makes sales that are exclusively (*i.e.*, 100%) for resale, that person or entity is not required to register under the Illinois Retailers' Occupation Tax Act and is not required to obtain an active registration number or resale number from the purchaser when making such sales. *See Dearborn Wholesale Grocers, Inc. v. Whitler,* 82 Ill.2d 471 (1980). If a person or entity engages in making both wholesale and retail sales, they are required to register under the Retailers' Occupation Tax Act and file monthly sales tax returns and document the exempt status of their wholesale transactions. *See Tri-America Oil Company v. Department of Revenue*, 102 Ill.2d 234 (1984). However, if the retail sales are only a minute portion of the total sales, insignificant in amount or irregular in frequency, the person or entity is not required to document the exempt status of their wholesale transactions. *See Illinois Cereal Mills, Inc. v. Department of Revenue,* 99 Ill.2d 9 (1983) and *Tri-America Oil Company v. Department of Revenue*. 102 Ill.2d 239 & 241.

It is the Department's understanding that, prior to January 1, 20XX, and beginning January 1, 20XX, COMANY1's sales activities in Illinois are limited to the sale and trading of U_3O_8 stored at the COMPANY2 conversion facility located in CITY2, Illinois. COMPANY1 also enters into limited amounts of conversion transactions with COMPANY2, where yellowcake is physically incorporated as an ingredient of constituent of UF_6, which is ultimately sold by COMPANY1. During the calendar years 20XX and 20XX, COMPANY1 also sold at retail stable nuclear isotopes to customers in Illinois. COMPANY1 did not sell any stable nuclear isotopes in Illinois after July 20XX.

As noted above, if a person or entity engages in making retail sales in Illinois it is required to register under the Retailers' Occupation Tax Act and file monthly sales tax returns with the Department. If a person or entity engages in making both wholesale and retail sales, in addition to registering under the Retailers' Occupation Tax Act and filing monthly sales tax returns, they are required to document the exempt status of their wholesale transactions. Only under limited circumstances is a person or entity engaged in making both wholesale and retail sales not required to document the exempt status of their wholesale transactions.

COMPANY1 was required to register under the Retailers' Occupation Tax Act and file monthly sales tax returns with the Department when it began making retail sales of stable nuclear isotopes in Illinois. If it did not register and file such returns, it is required to register and file returns for the periods in which it made retail sales of stable nuclear isotopes or other tangible personal property in Illinois and would be subject to any applicable penalties and interest for failing to timely file returns

and pay tax on such sales under the guidelines of the Board of Appeals' Voluntary Disclosure Program.

According to your letter, COMPANY1 only made retail sales of stable nuclear isotopes in Illinois during calendar years 20XX and 20XX. You subsequently advised the Department by email that retail sales of stable nuclear isotope in Illinois represented only 0.087% and 0.003% of total Illinois sales for the years 20XX and 20XX, respectively. These retail sales represent only a minute portion of total Illinois sales during these years. Based on this information and the unique nature of COMPANY1's business, the Department believes that the retail sales of stable nuclear isotopes in Illinois during 20XX and 20XX are not sufficient to require COMPANY1 to document the exemption of its sales for resale of uranium products in Illinois.

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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[1] *Dearborn Wholesale Grocers, Inc. v. Whitler,* 82 Ill. 2d 471 (1980).

[2] *Illinois Cereal Mills, Inc. v. Dep't of Revenue,* 99 Ill. 2d 9 (1983).

[3] *See* Ill. Priv. Ltr. Rul. No. IT 11-0003-PLR (Nov. 18, 2011).

[4] Note that COMPANY1 has entered into small number of conversion transactions with COMPANY2.

[5] 35 ILCS 120/2.

[6] *First Nat. Bank of Springfield v*. *Dep't of Revenue*, 85 Ill. 2d 84, 88 (1981).

[7] *Farrand Coal Co*. *v*. *Halpin*, 10 Ill. 2d 507, 508 (1957).

[8] *Id*. at 511(Internal quotation marks omitted.).

[9] *Exelon Corp*. *v. Dep't of Revenue*, 234 Ill. 2d 266, 275-76 (2009).

[10] *Id*. at 276 (internal quotations omitted).

[11] *See* Illinois Dept. of Rev. Gen. Info. Ltr. No. ST 10-0052-GIL (June 4, 2010) (providing that a sale of gift cards is a sale of intangible property when the underlying transaction is considered a sale of rights to purchase from a merchant at a future point in time).

[12] *See* Ill. Priv. Ltr. Rul. IT 11-0003-PLR (Nov. 18, 2011).

[13] Ill. Priv. Ltr. Rul. IT 11-0003-PLR (Nov. 18, 2011).

[14] 82 Ill. 2d 471 (1980).

[15] 99 Ill. 2d. 9 (1983).

[16] 35 ILCS 120/2c.

[17] *Dearborn Wholesale Grocers,* 82 Ill. 2d 471 (1980).

[18] *See Illinois Cereal Mills, Inc.* 99 Ill. 2d 9 (1983).

[19] *Illinois Cereal Mills, Inc.* 99 Ill. 2d 17.

[20] *Tri-America Oil Co. v. Dep't of Revenue*, 102 Ill. 2d 234 (1984).

[21] *Id*. at 239-241.

[22] Ill. Private Ltr. Rul. ST 10-0004-PLR (July 16, 2010).

[23] *Id.*

[24] *Id.*

[25] Note that COMPANY1 has entered into small number of conversion transactions with COMPANY2. Pursuant to 35 ILCS § 105/2 and 86 Ill. Admin. Code § 150.201(a), the conversion transactions should not be subject to Use Tax. In these cases, COMPANY1 has contracted for the physical incorporation of yellowcake as an ingredient or constituent of UF_6, which COMPANY1 ultimately sells in the regular course of business and which should be exempt from ROT and Use Tax under the analyses presented above.