

This letter responds to a general information request regarding sales and excise taxes. See 86 Ill. Adm. Code 130.101. (This is a GIL.)

September 20, 2012

Dear:

This letter is in response to your letter dated August 6, 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.

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:

We are professional engineering company that provides utility studies for our clients. We would like clarification on the following issues:

1. Is there any exemption to State Sales Tax or City fees available to manufacturers for the use of gas, electricity and water in the manufacturing process?
2. If yes, are research and development activities and packing operations considered manufacturing?
3. What is your sales tax rate and the statute of limitations?
4. Can local cities impose their own tax and are they subject to any exemptions?
5. Are there any exemptions available to residential accounts for the use of water, gas and electricity?
6. If yes, are nursing homes and apartment buildings considered residential?
7. Are there any other circumstances where utilities could be considered exempt from tax?
8. Who can we talk to or write to if we have additional questions concerning sales and use tax?

Please send us the forms necessary to file a claim for refund and exemption. Also, could you explain the proper procedure for filing a claim, including whether we file it with the state or the utility company. Are there any fact sheets or regulations we can refer to.

Thank you in advance for your timely response. If you have any questions, my direct number is X.

DEPARTMENT'S RESPONSE:

1. Is there any exemption to State Sales Tax or City fees available to manufacturers for the use of gas, electricity and water in the manufacturing process?

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Persons who sell tangible personal property must either pay tax or document an exemption. The Manufacturing Machinery and Equipment Exemption from sales tax is available for sales of 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.

The law exempts only the purchase and use of "machinery" and "equipment" used in manufacturing or assembling. Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process; including, machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment. See 86 Ill. Adm. Code 130.330(c)(1) and 130.330(c)(2).

The exemption does not include hand tools, supplies (such as rags, sweeping or cleaning compounds), coolants, lubricants (e.g., hydraulic and machine oils), adhesives, or solvents, items of personal apparel (such as gloves, shoes, glasses, goggles, coveralls, aprons, masks), coal, fuel oil, electricity, gas, or water. See 86 Ill. Adm. Code 130.330(c)(3). Usually, oils and lubricants are considered consumable supplies. Consumable supplies, which although necessary in the manufacturing process, do not qualify for the exemption because they are not machinery, equipment, or replacement parts for such machinery or equipment. Please refer to 86 Ill. Adm. Code 130.330.

The Gas Revenue Tax Act imposes a tax upon persons engaged in the business of distributing, supplying, furnishing, or selling gas to persons for use or consumption and not for resale. 35 ILCS 615/2. Except for transactions in interstate commerce, no specific exemptions are provided under the Gas Revenue Tax Act. However, the definition of gross receipts contained in the Act excludes consideration received from certain businesses that are certified by the Department of Commerce and Community Affairs under Section 9-222.1 of the Public Utilities Act (220 ILCS 5/9-222.1). 35 ILCS 615/1. See 86 Ill. Adm. Code 470.131. The tax also does not apply to gross receipts received from the federal government. See 86 Ill. Adm. Code 470.160.

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.

Section 5-50 contains the following exemptions from the Gas Use Tax:

1. gas used by a business located in an enterprise zone;
2. gas 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 the Department of Revenue;
3. gas used in the production of electric energy, but not including gas used in the general maintenance or heating of an electric energy production facility or other structures;
4. gas used in petroleum refinery operations;
5. gas used in liquefaction and fractionation processes that produce value-added natural gas by-products for resale; and
6. gas used in the production of anhydrous ammonia and downstream nitrogen fertilizer products for resale.

A business enterprise need only be located in an enterprise zone certified by the Department of Commerce and Economic Opportunity to claim the exemption provided in Section 5-50. The business itself does not need to be certified by the Department of Commerce and Economic Opportunity. Gas used 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).

The Electricity Excise Tax Law (35 ILCS 640/1 *et seq.*) imposes a tax upon the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service. Section 2-4(c) of this Law states in part: “[t]he tax imposed by this Section 2-4 is not imposed with respect to any use of electricity by business enterprises certified under Section 9-222.1 or 9-222.1A of the Public Utilities Act, as amended, to the extent of such exemption and during the time specified by the Department of Commerce and Economic Opportunity; or with respect to any transaction in interstate commerce, or to the extent to which such transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State.”

2. If yes, are research and development activities and packing operations considered manufacturing?

A “manufacturing process” is the production of articles of tangible personal property, whether such articles are finished products or articles for use in the process of manufacturing or assembling different articles of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating, or refining which 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 86 Ill. Adm. Code 130.330(b)(2).

As noted above, Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily (over 50%) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. The requirements of 86 Ill. Adm. Code 130.330 must be met when determining whether a piece of equipment qualifies for the manufacturing machinery and equipment exemption.

In general, the use of machinery or equipment to place the tangible personal property to be sold into the container, package, or wrapping in which such property is normally sold where such machinery or

equipment is used as a part of an integrated manufacturing process would qualify. See 86 Ill. Adm. Code 130.330(d)(3)(E).

Research and development are not part of the manufacturing process. However, purchasers of manufacturing machinery and equipment that qualifies for the manufacturing machinery and equipment exemption earn a credit in an amount equal to a fixed percentage of the tax which would have been incurred under the Use Tax or Service Use Tax. 35 ILCS 105/3-85; 35 ILCS 110/3-70.

The credit may be used to satisfy Use Tax liability that is incurred on the purchase of production related tangible personal property that does not qualify for the manufacturing machinery and equipment exemption. The amount of manufacturer's purchase credit that can be applied to a purchase of production related tangible personal property is limited to the State rate of tax incurred on that property (6.25%). 86 Ill. Adm. Code 130.331(b)(2).

'Production related tangible personal property' includes all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process described in Section 2-45 of the Retailers' Occupation Tax Act takes place, and all tangible personal property used or consumed by a manufacturer or graphic arts producer in research and development regardless of use within or without a manufacturing or graphic arts production facility. See 35 ILCS 105/3-85.

3. What is your sales tax rate and the statute of limitations?

The Retailers' Occupation Tax rate and Use Tax rate imposed by the State of Illinois are 6.25% and 1%, depending on the type of item being sold. See Sections 130.310 and 130.311. For local tax rates, see the Department's Tax Rate Database and the Tax Rate Finder on the Department's website.

Sections 4 and 5 of the Retailers' Occupation Tax Act set out the limitations periods for issuance of Notices of Tax Liability to retailers. See 35 ILCS 120/4 & 5. Section 12 of the Use Tax Act incorporates certain sections of the Retailers' Occupation Tax Act, including the limitations provisions provided in that Act. See 35 ILCS 105/12. These limitation provisions run from the date the tax is due rather than from the date the gross receipts are received.

4. Can local cities impose their own tax and are they subject to any exemptions?

See the information provided in response to question 3.

Local retailers' occupation taxes imposed by local governments and that are administered by the Department must follow the same rules for exemptions, credits, and other administrative procedures as the State Retailers' Occupation Tax. Consequently, if an item is exempt under the Retailers' Occupation Tax, it is also exempt from a local retailers' occupation tax.

5. Are there any exemptions available to residential accounts for the use of water, gas and electricity?

The State of Illinois does not impose a sales tax on the sale of water by public utilities, cooperatives or units of local government.

Generally, there are no exemptions under the Electricity Excise Tax Law, The Gas Revenue Tax Act and the Gas Use Tax Law for residential consumers.

7. Are there any other circumstances where utilities could be considered exempt from tax?

The exemptions from Electricity Excise Tax, Gas Revenue Tax and the Gas Use Tax are generally described in paragraph 1 above.

8. Who can we talk to or write to if we have additional questions concerning sales and use tax?

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
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