

ST 15-0019-PLR 12/22/2015 MANUFACTURING MACHINERY & EQUIPMENT

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.)

December 22, 2015

Dear Mr. Xxxxxx:

This letter is in response to your letter dated August 18, 2014 in which you request information and the supplemental materials you submitted on October 5, 2015. 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 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 ABC 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:

Request for Private Letter Ruling

This request for a private letter ruling is made in accordance with the rules set forth in 2 Ill. Adm. Code Section 1200.110. The taxpayer, ABC, ("ABC") is not under audit and is not currently engaged in any audit, litigation, protests, or appeals with Illinois in regards to the issue for which this private letter ruling request is made.

To the best of the knowledge of the taxpayer and the taxpayer's representative, the Illinois Department of Revenue ("the Department") has not previously ruled on the same or similar issue for the taxpayer or a predecessor. Also, the taxpayer and its representative have not previously submitted the same or similar issue to the Department and withdrawn it before a letter ruling was issued.

All relevant facts are provided below in the *Facts* section. All relevant authorities are discussed in the section entitled *Law and Discussion*. ABC is unaware of any authorities to the contrary of its position, which have not been revoked under 2 Ill. Adm. Code Section 1200.110(e).

A Power of Attorney form is attached, authorizing PERSON 1 and PERSON 2 of COMPANY 1, to act as ABC's representative in this matter. If the Department requires additional information or a meeting on this matter, please contact PERSON 1 as indicated on the Power of Attorney. The taxpayer requests the right to withdraw this Request for Private Letter Ruling, if after review of this document, additional documentation, or meeting with its representative, the Department is inclined to issue an opinion which is contrary to the taxpayer's position.

ABC is currently constructing a feed mill in CITY 1, Illinois. The purpose of this facility is to manufacture feed for stock animals by combining various ingredients such as grains (corn, wheat, etc.), dry ingredients other than grain (phosphorus, lysine, etc.), and liquid proteins ("white grease" or corn oil, etc.) in certain quantities so as to produce feed for sale. ABC is requesting a private letter ruling from the Illinois Department of Revenue as to the exempt status for Illinois sales (Retailers' Occupation Tax) and use taxes of certain manufacturing machinery and equipment (discussed below) which will be installed and utilized in its new mill.

Facts

For purposes of discussing the various operations and equipment of the mill, this private letter ruling request will divide the mill into four distinct areas:

- Grain receiving and initial processing;
- Other dry additives receiving and initial processing;
- Liquid ingredient receiving and initial processing; and
- Main processing and shipping.

A flowchart showing the relationship of the different production stations discussed below is attached for the Department's convenience in visualizing the operations of ABC's facility.

Grain receiving and initial processing

Grain, such as corn and wheat, are delivered to the mill in large semi-trailer trucks. Scales and probes are used to measure and evaluate the loads of grain as they are received (the probe is attached to a vacuum which pulls samples into a pipeline which delivers the grain to a testing station) to insure that they meet specific standards for feed processing. The grain is then placed into a receiving pit for temporary holding. From the receiving pit, the grain is transferred by a leg (essentially, a double sided square box with elevator belts with buckets inside) to large hopper tanks. From the hopper tanks, the grain is transferred via a conveyor and leg to overhead tanks, and is then dropped into a triple roller grinder, which grinds or "shatters" into different micron sizes (fineness) depending

on the application of the feed the ground grain will become part of (for instance, lactating sows may require a feed with a finer grind than that for most hogs). The micron size of the grind is measured every hour to insure the precision of the grind. After this initial process, the ground grain flows via conveyors and legs to temporary storage (referred to as [sic] "processed grain storage"), as the type of feed the grain was ground for may not be immediately in production upon completion of a particular grind.

The subsequent processing of the ground grain will be discussed in the "Main processing and shipping" section of this document.

Additive receiving and processing

Various additives will be added to the ground grain in producing feed. These additives are received in bulk, in tote bags (which generally weigh 2000 pounds), or regular bags (which typically weigh 50 pounds). Depending on whether the additives are received in bulk or in bags, the additives will be received in one of two ways. Bulk additives will be will [sic] received on a separate set of truck scales other than those used for grain. Similarly, pits, which are generally separate from the grain pits, will be used for unloading bulk additives. From these pits, bulk additives will then be, via conveyors and distributors, placed into separate storage bins. Underneath the bins are scales which will be used to precisely measure the amount of particular additive required for a particular feed mixture. Additives which are received in bags and tote bags are unloaded from trucks to a warehouse. Additives loaded in totes or bags are unloaded in the "easy automation micro ingredient and tote bag systems" to be precisely measured into amounts for mixing with other ingredients. The additive amounts to be measured typically must be must [sic] more precise than grain as additive amounts are, by weight, generally less than for the amount of grain in a given mixture.

The subsequent processing of additives will be discussed in the "Main processing and shipping" section of this document.

Liquid protein receiving and processing

Typical liquid protein ingredients are comprised of "white grease." This is often either corn oil or pork grease. The particular type of protein used in manufacturing any one feed depends on the application of the feed to be made and the ambient temperature when the feed is produced. These ingredients are used to eliminate dust from the dry ingredients, which can be detrimental to the lungs of stock. These liquid ingredients arrive [sic] ABC's CITY 1 mill in trucks and are placed in a tank. Upon processing, liquid ingredients are pumped from the receiving tank through a "thru mixer scale," the purpose of which is to weigh the amount of ingredient to be included in the feed mixture being processed.

The subsequent processing of liquid proteins will be discussed in the "Main processing and shipping" section of this document.

Main processing and shipping

From the processed grain storage and both the additive hopper scale and "easy automation micro ingredient and tote bag systems," dry ingredients (both grains and

additives) are measured by weight in a batching bin. The ground grain is transferred from the hopper tanks to the batching bin by a conveyor belt, to a leg, to the batching bin, and then from the batching bin by gravity to the hopper scale. In the case of the additives, computerized measuring is used to obtain the level of accuracy needed for the additive ingredients. The dry mixture is then transferred via an auger to the batching bin and, along with the grain, is transferred by gravity to the major scale hopper, along with the liquid ingredients where the aggregate of all the feed mixture are once again weighed to insure that the correct amounts of ingredients are to be used in the mixture.

Once more, legs, and distributors are used to transfer the combined ingredients from the major scale hopper to the twin mixer and surge. This production station turns paddles to consistently combine dry and liquid ingredients. The surge acts like a spatula to clean and remove the combined mixture from the mixer. The mixture then, via a conveyor, proceeds to a gyro feed cleaner, which has an internal screen wheel that spins. The purpose of this device is to remove foreign matter in the mixture (metal particles, etc.). After the mixture has been processed through the gyro feed cleaner, it has been fully processed and is ready for shipment. The mixture is, by conveyors and overhead conveyors placed in finished feed bins, until it is shipped. A Camran video system is used for "load out" (the process of loading the finished products into tank trucks for shipping). This allows for the loading process to be controlled from inside the offices of the company, as opposed to a person physically directing the process on the shipping dock.

Law and Discussion

Sales and uses of manufacturing and assembly machinery and equipment used primarily in the process of manufacturing or assembling of tangible personal property for wholesale or retail sale, or lease is provided for by 35 ILCS 120/2-5(14) and 35 ILCS 105/3-5(18).

These sections also state:

- Whether the sale or lease is made directly by the manufacturer or some other person; or
- Whether the materials used in the process are owned by the manufacturer of [sic] some other person.

In addition, the exemption is not available to operations that generate electricity for sale, generate gas for sale (that is delivered through pipes, pipelines, or mains), or the treatment of water for sale (that is delivered to customers through pipes, pipelines, or mains).

35 ILCS 120/2-45 and 35 ILCS 105/3-50 (and their various subsections) provide additional provisions and clarity in regards to the manufacturing and assembly machinery and equipment exemptions noted above.

They provide that:

"Manufacturing process" means the production of an article of tangible personal property, whether the 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 a

procedure 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. In relation to a recognized integrated business composed of a series of operations that collectively constitute manufacturing, or individually constitute manufacturing operations, *the manufacturing process commences with the first operation or stage of production in the series and does not end until the completion of the final product in the last operation or stage of production in the series.* For purposes of this exemption, photo processing is a manufacturing process of tangible personal property for wholesale or retail sale." (*Emphasis added*).

ABC has one business, which is the manufacture of feed to be used in raising livestock, primarily hogs. The feed is tangible personal property, the entire production of which is sold, either at retail or wholesale, by ABC. The process which produces the various mixtures of feed would commonly be considered manufacturing, in that grain, a major ingredient, is changed by the grinding process, and is then further changed by precisely mixing other ingredients with the ground grain to yield various feed products that will meet various nutritional goals, depending on the condition of the animals to which it is fed. All the machinery and equipment in the mill is either production machinery, used in manufacturing, or production related tangible personal property.

Key to determining what machinery and equipment in the mill is exempt under the exemptions provided in 35 ILCS 120/2-5(14) and 35 ILCS 105/3-5(18) is identifying the first and last stages of production.

For ABC, the first stage, varies with the category of ingredient. For grain, the first stage of production is the triple roller grinder, which physically changes the nature of the grain received by ABC.

The first stage of production for the dry additives is the batching bin. At this time, the ground grain and the dry additives are combined together.

The first stage of production for the liquid protein, or "white grease" ingredient is the major scale hopper. At this stage of production, the liquids enter the production process as the required amount of this ingredient for the feed being produced is injected into the production process.

After the major scale hopper, the next stage of production for all ingredients (now combined) is the twin mixer and surge, which further combines the ingredients into a homogenous product. The next and final stage of production for all ingredients is the gyro feed cleaner, which removes foreign material from the feed mixture. After this process, the feed is completed and is forwarded to bins to await shipment.

Under 35 ILCS 105/3-50(1), 35 ILCS 120/2-45(2), ST 96-0269-PLR, and ST 87-0428-PLR all machinery used to transport or store semifinished tangible personal property between production stations should also qualify for the exemptions provided in 35 ILCS 120/2-5(14) and 35 ILCS 105/3-5(18).

Conclusion

ABC's position is that the following equipment located and operated in ABC's CITY 1 mill will qualify for the manufacturing and assembly machinery and equipment exemption cited above.

- Triple roller grinder ;
- Conveyors and legs between the triple roller grinder and the processed grain storage;
- Conveyors and leg between the processed grain storage and the batching bin.
- Major scale hopper;
- Legs and distributors which convey the product in process to the twin mixer and surge;
- Twin mixer and surge;
- Conveyor between twin mixer and surge and the gyro feed cleaner; and
- Gyro feed cleaner.

We respectfully request that the Illinois Department of Revenue [sic] private letter ruling as to the tax status of this equipment under both the Illinois Retailers' Occupation Tax and Use Tax Acts.

Your consideration in this matter is most appreciated.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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.

Retailers' Occupation Tax, however, does not apply to sales of machinery and equipment used primarily 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 articles of tangible personal property 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 Section 130.330(b)(2).

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 or for in-house manufacture of exempt machinery and equipment. See Section 130.330(c)(2).

With regard to “primary use”, the rule provides that “the purchaser must be able to establish through adequate records that the machinery or equipment is used over 50 percent in an exempt manner in order to claim the deduction.” 86 Ill. Adm. Code 130.330(d).

Based on your descriptions of the feed mill equipment listed and your representations with respect to how the equipment is primarily used in the manufacturing and assembly process, as well as the supplemental material you provided, the Department is of the opinion that the following equipment as identified in your letter qualifies for the manufacturing machinery and equipment exemption pursuant to the Department’s regulation found at 86 Ill. Adm. Code 130.330:

- Triple roller grinder;
- Conveyors and legs between the triple roller grinder and the processed grain storage;
- Conveyors and legs between the processed grain storage and the batching bin;
- Major scale hopper;
- Legs and distributors which convey the product in process to the twin mixer and surge;
- Twin mixer and surge;
- Conveyor between twin mixer and surge and the gyro feed cleaner; and
- Gyro feed cleaner.

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 further 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,

Richard S. Wolters
Chairman, Private Letter Ruling Committee

RSW:SJM:ikm