

ST 15-0071 (GIL) October 15, 2015 MISCELLANEOUS

The River Edge Redevelopment Zone building materials exemption is limited to building materials that will be incorporated into real estate as part of an industrial or commercial project. See 35 ILCS 120/2-54 and 86 Ill. Adm. Code 130.1954. (This is a GIL.)

October 15, 2015

Dear Xxxxx:

This letter is in response to your letter dated September 16, 2015, 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:

The ABC CORPORATION was established to promote economic development within city's downtown, including the District. The District includes XYZ River Edge Redevelopment Zone (RERZ). We currently have X developers who are interested in redeveloping historic warehouse buildings into mixed use, multi-family residential rental units and commercial/retail use.

These developers have inquired as to why the RERZ administrative rules exclude multi-family residential rental properties from the definition of qualified sale of building materials to be incorporated into real estate within a RERZ? The question stems from the apparent inconsistency in treating multi-family residential rental properties as commercial property in other applications of the tax code, yet classifying them as residential for sales tax exemption under RERZ.

Our request is that IDOR-Legal Services review these rules and inform us if the interpretation we have been given is accurate, i.e. that mixed use property that

includes multi-family residential rental units does not qualify for the sales tax exemption?

If the interpretation we have been given is accurate, how can proceed to change this interpretation of Title 86? Can we seek an administrative change from the Department Head or Governor or do we need to seek legislative changes?

I appreciate your consideration of this request and look forward to your response.

Thank you,

DEPARTMENT'S RESPONSE:

Section 2-54 of the Retailers' Occupation Tax Act provides an exemption from tax for retailers making qualified sales of building materials to be incorporated into real estate within a River Edge Redevelopment Zone in accordance with the River Edge Redevelopment Zone Act by remodeling, rehabilitating, or new construction. 35 ILCS 120/2-54. For purposes of Section 2-54, "qualified sale" means a sale of building materials that will be incorporated into real estate as part of an industrial or commercial project for which a Certificate of Eligibility for Sales Tax Exemption has been issued by the corporate authorities of the municipality in which the building project is located.

The exemption explicitly states that only building materials that will be incorporated into real estate as part of an industrial or commercial project qualify for the exemption. The exemption does not include building materials that will be incorporated into real estate as part of a residential project. Other sections of the Retailers' Occupation Tax Act that provide exemptions for building materials incorporated into real estate do not contain any limitation on the type of projects that the building materials may be incorporated to qualify for the exemption. See 35 ILCS 120/5k & 5l. The Department reviewed the existing building materials exemptions in the Act, the language in Section 2-54 and promulgated rules that the Department believes reflect the legislative intent of Section 2-54 of the Act. The rules were adopted with no objection by the Joint Committee on Administrative Rules. 86 Ill. Adm. Code 130.1954.

Section 130.1954(b)(3) allows the retailer to take the exemption for the building materials incorporated into the commercial portion of a multi-use development project that also includes residential units.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:bkl