

Post-production storage facilities do not generally qualify for the manufacturing machinery and equipment exemption. However, a refrigeration or freezer facility maintained at a specific temperature which is required in order to preserve a manufactured product, can qualify for the exemption. See 86 Ill. Adm. Code 130.330. (This is a PLR.)

July 8, 2016

Dear Xxxxx:

This letter is in response to your letter dated April 27, 2016, 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 COMPANY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Admin. Code § 1200.110, governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that COMPANY, 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:

On behalf of our client, COMPANY (“Taxpayer”), we respectfully request that the Illinois Department of Revenue (the “Department”) issue a Private Letter Ruling (“PLR”) pursuant to 2 Ill. Adm. Code 1200.110 with respect to the factual situation set forth below. If the Department has any questions relating to the matters described herein, please contact the undersigned.

A. Statement of Facts

1. Taxpayer Information

- a. Enclosed please find an original executed form IL-2848, Power of Attorney, authorizing ATTORNEY to represent the Taxpayer before the Department.
- b. This PLR is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the

Retailers' Occupation Tax and Use Tax consequences of actual business practices of the Taxpayer.

- c. Neither the Taxpayer nor any member of the Taxpayer is currently engaged in litigation with the Department in regard to this or any other tax matter.
- d. The Taxpayer is not currently under audit by the Department in regard to this tax matter.
- e. The Department has not previously ruled regarding this matter for the Taxpayer. In addition, the Taxpayer has not submitted the same or similar issue to the Department.
- f. The Taxpayer requests certain information be deleted from the PLR prior to disseminating to others. The Taxpayer requests that its names, addresses, location of the facility, the description of the facility, and the name of its representative be deleted.
- g. The Taxpayer is not aware of any authority contrary to the authorities referred to and cited below.

2. Description of Taxpayer's Business Operations

The taxpayer is the founder and world leader of the non-dairy segment of the frozen-foods industry, including non-dairy toppings, icings and other emulsions, and is a leading supplier and solutions provider to the foodservice, in-store bakery and retail market place. Headquartered in CITY 1, STATE 1, the Taxpayer operates a seamless, global organization with five geographic regions that includes two existing manufacturing facilities in Illinois located in CITY 2 and CITY 3.

3. Material Facts Relating to the Transaction

a. The Cold Storage Facility

The Taxpayer is constructing a cold storage facility in CITY 2, Illinois. The Taxpayer will develop the facility at a location adjacent to the Taxpayer's existing CITY 2 manufacturing facility in order to provide efficient and cost-effective temperature reduction, temperature maintenance and post-production storage of the Taxpayer's perishable bakery, meat and dairy products. The facility will have a grant of inspection from the USDA that will allow the warehouse operator to perform services that require USDA oversight such as exporting and "off-premises freezing."

b. The Production Process

Upon construction of the cold storage facility, the Taxpayer's integrated manufacturing process at its CITY 2 site will include the manufacturing of perishable bakery, meat and dairy products at its manufacturing facility, the transfer by overhead pallet conveyor of the products from the manufacturing facility to the Taxpayer's adjacent cold storage facility, and the reduction and maintenance of product temperatures during post-production storage to prevent spoilage and contamination of the products prior to ultimate sale at retail or wholesale. Once the Taxpayer receives products from its manufacturing facility by conveyor to its cold storage facility, the product temperatures will be reduced from 10 degree Fahrenheit to zero degrees Fahrenheit or colder. The products will be maintained at such reduced temperatures in order for the products to be shipped from the CITY 2 facilities at future dates for sale, without spoilage or contamination.

c. The Freezer Machinery and Equipment

Among other machinery, equipment and materials used in the construction of the CITY 2 cold storage facility, the Taxpayer will purchase and install certain machinery and equipment in the facility that directly relate to the temperature reduction and temperature maintenance of the Taxpayer's integrated manufacturing process. That machinery and equipment, which is the subject of this PLR, includes an industrial ammonia refrigeration system that is comprised of various refrigeration components including compressors, compressor motors, evaporators, coils, blower units, vessels, pumps, heat exchangers, condensers, and associated piping, controls and valves (the "Refrigeration System") and shelving and racking equipment and related components (the "Racking Equipment") (the Refrigeration System and Racking Equipment, collectively, the "Freezer Machinery and Equipment").

i. The Refrigeration System

The main components of the Refrigeration System will be constructed and located within the engine room of the Taxpayer's cold storage facility. In addition, numerous pipes, valves, controls and control wiring will connect through the engine room but be located throughout the facility building and roof in order to facilitate the temperature reduction and maintenance to the appropriate areas of the facility. The Refrigeration System is custom-designed to the Taxpayer's specifications, purchased from multiple vendors, and assembled on-site at the facility. The Refrigeration System will be used exclusively to reduce and maintain temperatures in the cold storage areas of the facility that will contain the Taxpayer's perishable bakery, meat and dairy

products. The Refrigeration System will not be used for general ventilation, cooling, or climate control, or in any other manner that is not required by the Taxpayer's manufacturing process. The Taxpayer will install an ancillary commercial heating and cooling system to provide temperature control to non-cold storage areas of the facility, including offices, restrooms, break rooms, engine rooms and other common areas. The machinery and equipment related to the ancillary commercial heating and cooling are not included in the Taxpayer's Freezer Machinery and Equipment for purposes of this PLR. Likewise, any components that form the foundation or support of the facility are not considered part of the Taxpayer's Freezer Machinery and Equipment. The Refrigeration System will be in continuous use as there will be a constant flow of perishable products through the cold storage facility so that the Refrigeration System will not be idle.

ii. The Racking Equipment

The Racking Equipment will be located within the cold storage areas of the Taxpayer's cold storage facility. The Racking Equipment is specially designed to create space around the sides of the pallets of product to ensure proper air flow and temperature reduction between products. Without the Racking Equipment, airflow between the products would be restricted, the cold air created by the Refrigeration System would not effectively cool the products and heat from biological processes would spoil and contaminate the product. Thus, the Racking Equipment protects the product from destruction. In addition, the Racking Equipment facilitates efficient storage of the Taxpayer's perishable bakery, meat and dairy products when they undergo temperature reduction and temperature maintenance.

B. Ruling Requested

The Taxpayer respectfully requests that the Department rule that the sale of the Freezer Machinery and Equipment (including the Refrigeration System and Racking Equipment) defined above qualifies for exemption from the Illinois Retailers' Occupation Tax and Use Tax.

C. Statement of Law

The Illinois Retailers' Occupation Tax ("ROT") and Use Tax ("UT") (collectively, "ROT/UT") impose a tax on persons engaged in the business of making retail sales of tangible personal property. 35 ILCS 120/2; 35 ILCS 105/1a. However, the sale or use of certain tangible personal property 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 (the "Manufacturing Machinery and Equipment" exemption). 35 ILCS 120/2-5(14); 35 ILCS 105/3-5(18). See also 86 Ill. Adm. Code 130.330; 86 Ill. Adm. Code 150.910 ("In general, the provisions of [86 Ill. Adm. Code 130] shall apply under the [UT] Act).

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. 35 ILCS 120/2-45(3); 35 ILCS 105/3-50(3); 86 Ill. Adm. Code 130.330(c)(2). Equipment includes an independent device or tool separate from the machinery but essential to an integrated manufacturing or assemble process. 35 ILCS 120/2-45(4); 35 ILCS 105/3-50(4); 86 Ill. Adm. Code 130.330(c)(3). Machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment. 86 Ill. Adm. Code 130.330(c)(5). Generally, items such as the framing for a building and its walls, ceilings, floors and doors would not qualify for the exemption.

The Manufacturing Machinery and Equipment exemption applies 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. 86 Ill. Adm. Code 130.330(d). 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 as 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. 35 ILCS 120/2-45(1); 35 ILCS 105/3-50(1); 86 Ill. Adm. Code 130.330(b)(2). The production or processing of food is generally considered to constitute an exempt use for purposes of the Manufacturing Machinery and Equipment exemption. 86 Ill. Adm. Code 130.330(d)(3)(F).

The manufacturing process commences with the first operation or state of production in the series and does not end until the completion of the final product in the last operation or state of production in the series. 35 ILCS 120/2-45(a); 35 ILCS 150/3-50(1). Machinery and equipment used primarily to store, convey, handle or transport materials or parts of sub-assemblies prior to their entrance into the production cycle would not qualify for the Manufacturing Machinery and Equipment exemption. 86 Ill. Adm. Code 130.330(d)(4)(c)[sic]. Likewise, machinery and equipment used to store finished products after completion of the production cycle will generally not be considered to be manufacturing. 86 Ill. Adm. Code 130.330(d)(4)(D). Machinery and equipment that is used for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process would not qualify for the Manufacturing Machinery and Equipment exemption. 86 Ill. Adm. Code 130.330(d)(4)(H). Accordingly, generally items such as sprinkler systems and employee facilities such as

lunchrooms, restrooms, and locker rooms would not qualify for the exemption. See *Illinois General Information Letter ST 11-0069*.

In *Illinois Private Letter Ruling No. ST 14-0002*, the Taxpayer requested and received a private letter ruling that certain machinery and equipment, including (i) cooling equipment that maintains a precise temperature as part of the processing in order to preserve a manufactured product and (ii) racking equipment that facilitates adequate air flow to maintain a precise temperature qualifies for the Manufacturing Machinery and Equipment exemption. This ruling is consistent with a line of private letter rulings and general information letters issued by the Department, including *Illinois Private Letter Ruling No. ST 88-0136* and *Illinois General Information Letter No. ST-94-0116* (establishing the position that equipment used in food processing qualifies for the Manufacturing Machinery and Equipment exemption); *Illinois General Information Letter No. ST 11-0069* (specifically noting that machinery or equipment that is required for meat processing, such as cooling equipment that maintains a precise temperature as part of the processing, could qualify for the Manufacturing Machinery and Equipment exemption if used primarily for that purpose); *Illinois General Information Letter No. ST 99-0139* (noting that, as a general rule, pre-production and post-production storage facilities do not qualify for the Manufacturing Machinery Equipment exemption but that refrigeration or freezer facilities maintained at a specific temperature which is required to preserve a post-production manufactured product will qualify for such exemption). See also *Illinois General Information Letter No. ST 98-0193*; *Illinois General Information Letter No. ST 01-0192*; *Illinois General Information Letter No. ST 01-0162*; *Illinois General Information Letter No. ST 93-0121*.

D. Analysis

The Freezer Machinery and Equipment, including the Refrigeration System and Racking Equipment, qualifies for the Manufacturing Machinery and Equipment exemption because it is (i) machinery or equipment (ii) used primarily (iii) in the manufacturing or assembling of tangible personal property for wholesale or retail sale.

1. The Freezer Machinery and Equipment is “machinery and equipment” for purposes of the Manufacturing Machinery and Equipment exemption.

The Freezer Machinery and Equipment meets the definition of machinery and equipment for purposes of the Manufacturing Machinery and Equipment exemption. The Manufacturing Machinery and Equipment exemption applies to the purchase and use of machinery and equipment. 86 Ill. Adm. Code 130.330(c)(1). For purposes of the exemption, “machinery” means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process. 86 Ill. Adm. Code

130.330(c)(3). Equipment includes an independent device or tool separate from machinery but essential to an integrated manufacturing or assembly process. 35 ILCS 120/2-45(4); 35 ILCS 105/3-50(4); 86 Ill. Adm. Code 130.330(c)(3).

The refrigeration System is itself a “major mechanical machine” that facilitates the rapid reduction in product temperatures and temperature maintenance. The Refrigeration System is comprised of “components,” including compressors, evaporators, vessels, pumps, heat exchangers, condensers, and associated piping, controls and valves, and does not include any of the cold storage facility’s foundation or support. The Racking Equipment includes specifically designed racks and spacers separate from the Refrigeration System that facilitate the reduction in product temperatures and temperature maintenance. Accordingly, the Refrigeration System, Racking Equipment and their component parts are “machinery” and “equipment” for purposes of the Manufacturing Machinery and Equipment exemption.

Further, both the Refrigeration System and Racking Equipment contribute to and are essential to the Taxpayer’s integrated manufacturing process, which includes the reduction and maintenance of product temperatures during post-production storage to prevent spoilage and contamination of the Taxpayer’s products prior to shipment. In particular, the Refrigeration System reduces and maintains product temperatures and enables the Taxpayer’s perishable bakery, meat and dairy products to be maintained at standards and requirements necessary to prevent product spoilage and contamination so that the Taxpayer’s products may be subsequently sold for human consumption. The Racking Equipment is specifically designed and essential to the reduction and maintenance of product temperatures by creating space around the sides of the product, which protects the stacked product from destruction, and facilitates the organization of the products in a manner that provides proper air flow around and between the stored products. Without the Racking Equipment, airflow between the products would be restricted, and the reduced temperature created by the Refrigeration System would not be conducted in a uniform, timely and balanced manner, resulting in spoilage and contamination.

Without proper temperature reduction and temperature maintenance, the Taxpayer’s manufacturing process would be ineffective as its perishable bakery, meat and dairy products would spoil and could not be subsequently sold for human consumption. While no cooking, canning or cutting processes will be conducted at the cold storage facility, the continuous temperature reduction and temperature maintenance of the Taxpayer’s products occurring at the facility constitutes an essential aspect of the Taxpayer’s overall integrated manufacturing process.

Because both the Refrigeration System and Racking Equipment and their components are “machinery” and “equipment” and contribute and are essential to the Taxpayer’s manufacturing process, the Freezer Machinery and Equipment is machinery and equipment for purposes of the Manufacturing Machinery and Equipment exemption.

2. The Freezer Machinery and Equipment is “used primarily” in the Taxpayer’s production process for purposes of the Manufacturing Machinery and Equipment exemption.

The Freezer Machinery and Equipment is “used primarily” in the Taxpayer’s integrated manufacturing process. The Manufacturing and Equipment exemption applies 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. 86 Ill. Adm. Code 130.330(d). In this case, the exclusive use of the Freezer Machinery and Equipment is in connection with the Taxpayer’s manufacturing process. In particular, the Refrigeration System will not be used for general ventilation, heating, cooling, climate control or general illumination. Rather, the Refrigeration System will provide temperature control solely to the cold storage areas of the facility which will be in constant and continuous use providing temperature reduction, temperature maintenance and post-production storage to the Taxpayer’s perishable bakery, meat and dairy products. Likewise, while the Racking Equipment serves a dual purpose of facilitating the temperature reduction and temperature maintenance of the packaged product at the facility, and storage of packaged product while it undergoes temperature reduction and temperature maintenance, the Racking Equipment will be primarily used in connection with Taxpayer’s manufacturing process because the Racking Equipment will continuously facilitate the uniform and timely reduction and maintenance of product temperatures.

3. The Taxpayer’s integrated manufacturing process qualifies as a “manufacturing process” for the purposes of the Manufacturing Machinery and Equipment exemption.

The Taxpayer’s integrated manufacturing process qualifies as a manufacturing process for purposes of the Manufacturing Machinery and Equipment exemption. The manufacturing process commences with the first operation or state of production in the series and does not end until the completion of the final product in the last operation or state of production in the series. 35 ILCS 120/2-45(a); 35 ILCS 150/3-50(1). The production process involves the processing of food which is generally considered to be an exempt use for purposes of the Manufacturing Machinery and Equipment exemption. See 86 Ill. Adm. Code 130.330(d)(3)(F).

The Freezer Machinery and Equipment is used in connection with the Taxpayer's manufacturing process, and facilitates such process, by preventing spoilage and ensuring the products are reduced to and maintained at required temperatures, from the time the Taxpayer's perishable bakery, meat and dairy products are transferred to the cold storage facility through the time the products leave the facility. Because the Taxpayer's products are perishable and require specific reduced temperatures in storage, the nature of the Taxpayer's manufacturing process necessarily includes post-production storage. In this case, the Taxpayer's perishable bakery, meat and dairy products are transferred to the Taxpayer's cold storage facility from the Taxpayer's adjacent manufacturing facility by conveyor, are reduced in temperature, and stored in a temperature-controlled environment until shipment and ultimate sale at retail or wholesale. The Refrigeration System is essential because it prevents spoilage and preserves the product in a state fit for human consumption. The Racking Equipment is essential because it facilitates the airflow through and around the products to effectively reduce and maintain product temperatures. Accordingly, the Freezer Machinery and Equipment is essential to the Taxpayer's manufacturing process because the temperature reduction, temperature maintenance and post-production storage of the products at specific temperatures are critical components of Taxpayer's manufacturing process.

E. Conclusion

The Freezer Machinery and Equipment, including the Refrigeration Equipment and Racking Equipment, is machinery and equipment used primarily in the manufacturing process for purpose of the Manufacturing Machinery and Equipment exemption. Thus, ROT/UT does not apply to the sale of the Freezer Machinery and Equipment.

F. Signature

Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, and to the best of my knowledge and belief the facts presented in support of the requested ruling are true, correct and complete.

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 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). However, 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). Generally, items such as the framing for a building and its walls, ceilings, floors, and doors would not qualify for the exemption.

The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery or equipment is used primarily in manufacturing or assembling. See Section 130.330(d)(2). In addition, machinery or equipment that is used for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process would not qualify for the manufacturing machinery and equipment exemption. See Section 130.330(d)(4)(H). Generally, items such as sprinkler systems and employee facilities such as lunchrooms, restrooms, and locker rooms would not qualify for the exemption.

Refrigeration System

Machinery or equipment that is required to reduce and maintain temperatures in the cold storage areas of the facility that will contain the perishable bakery, meat and dairy products can qualify for the exemption if used primarily for that purpose. The Department has reviewed the information that you have provided. Based on your descriptions of how the equipment is used, the Department is of the opinion that the freezer machinery and equipment described in your letter qualifies for the Manufacturing Machinery and Equipment exemption from Illinois Retailers' Occupation Tax under 35 ILCS 120/2-45. Without the freezer machinery and equipment, the products would spoil and could not be subsequently sold for human consumption.

Racking Equipment

Manufacturing equipment that is independent from machinery but is nonetheless essential to an integrated manufacturing process qualifies for the Manufacturing Machinery and Equipment exemption. See 86 Ill. Adm. Code 130.330(c)(3). Based on your description of the racking equipment and how it will be used, without the racking equipment, the products would not receive proper air flow between the products. The cold air created by the Refrigeration System would not effectively cool the products and heat from biological processes would spoil and contaminate the products. For this reason, we believe the racking equipment is essential to an integrated manufacturing process and, therefore, also qualifies for the Manufacturing Machinery and Equipment exemption from Retailers' Occupation Tax under 35 ILCS 120/2-45.

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:DMB:bkl