

ST 16-0023-GIL-06/02/2016 FARM MACHINERY & EQUIPMENT

The sale of certain types of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. See 35 ILCS 120/2-5(2) and 86 Ill. Adm. Code 130.305. (This is a GIL.)

June 2, 2016

Dear XXXXX:

This letter is in response to your letter dated March 28, 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](http://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:

COMPANY received a notification of a sales tax audit from the Illinois Department of Revenue in 20XX. During this audit, the auditor identified two pieces of leased equipment as taxable. The equipment leased was a soybean seed treater, holding tanks, conveyor belts to move soybean seed to the scales and treater, and automation controls to allow for proper application of the treatment for the seed. This system is used for a short period of time during pre-plant and planting time only, as it has no further purpose.

Further information on the audit is as follows:

Taxpayer ID: XX-XXXXX

Account ID: XXXX-XXXX

Return Type: ST-1

Audit periods: 01/20XX-06/20XX

Is the treater system that we are the lessor of subject to sales tax, or is it classified as equipment used in agriculture production?

It was advised by the lead auditor in your department to send this question to your legal department for consideration as the answer is unclear.

Further information, details, or explanations of the situation will be provided upon request.

#### **DEPARTMENT'S RESPONSE:**

Without more information, the Department cannot provide you with a specific ruling on the transaction described in your letter. However, we hope the following information is helpful.

In general, the Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

In certain cases, the sale of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. Production agriculture is defined under the Retailers' Occupation Tax Act as "the raising of or propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. Production Agriculture also means animal husbandry, floriculture, aquaculture, horticulture, and viticulture." See 35 ILCS 120/2-35.

Under 86 Ill. Adm. Code 130.305, "Farm Machinery and Equipment", Illinois sales tax does not apply to the sale of machinery and equipment, both new and used and including that manufactured on special order, used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs. The sale of individual replacement parts for such machinery and equipment is also exempt. In order to obtain the exemption, the purchaser must certify to the use primarily in production agriculture of the equipment or machinery. See Section 130.305(a).

Machinery means major mechanical machines or machine components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. Machinery would include such things as tractors, combines, balers, irrigation equipment and cattle and poultry feeders. Improvements to real estate such as fences, barns, roads, grain bins, silos and confinement buildings are not considered exempt farm machinery.

Under 86 Ill. Adm. Code Section 130.305(n), farm machinery and equipment purchased for lease to be used by the lessee primarily in production agriculture or in a State or Federal agricultural program qualify for the exemption. Therefore, the lessor will not incur Use Tax on the purchase of the machinery or equipment if at the time of the sale, the purchaser-lessor certifies that the equipment or machinery will be used primarily in production agriculture. Should the purchaser-lessor subsequently lease the machinery or equipment primarily to lessees who do not use it in a manner that would qualify for the exemption, the purchaser-lessor will become liable for the tax from which he was previously exempted. See Section 130.305(n).

Please be aware that Illinois taxes rentals differently than many other states. When you rent an item of tangible personal property and the transactions are structured so that they constitute "true leases," then no Retailers' Occupation Tax liability is incurred on the rental receipts. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes. See 86 Ill. Adm. Code 130.220 and 86 Ill. Adm. Code 130.2010.

True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors of tangible personal property under true leases in Illinois are deemed end users of the leased property and they incur Use Tax liability on their cost price of such property. As noted above, no tax liability applies to rental receipts under true leases. The only exception is automobiles rented for one year or less, which are subject to the Automobile Renting Occupation Tax.

Under 86 Ill. Adm. Code 130.2010(a), persons who purport to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales whose total receipts are subject to Retailers' Occupation Tax. Such would be the case when the agreements contain one dollar or other nominal purchase options.

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

Very truly yours,

Debra M. Boggess  
Associate Counsel

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