

Machinery and equipment used in a recycling processing facility to produce recycled material for wholesale or retail sale qualifies for the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code 130.330. (This is a PLR.)

July 11, 2018

Re: Private Letter Ruling Request – Retailers’ Occupation Tax, Use Tax and Exemptions as applied to Recycling Facilities

Dear Xxxxx:

This letter is in response to your letter dated May 15, 2018, in which you requested 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 Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither 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 (FEIN – ###/ IBT – ###) (“ACRONYM” or the “Company”), please allow this to serve as a request for a Private Letter Ruling as authorized by the Department of Revenue pursuant to 2 Ill. Adm. Code 1200.110 with respect to the inquiry detailed below. If the Department has any questions relating to the facts described, please contact the undersigned.

The firm of FIRM(the “Representative”) is authorized to request the Private Letter Ruling on behalf of the Company. An executed power of attorney is attached. Taxpayer identifying information is set out as follows:

COMPANY
CONTACT
ADDRESS

Statement of Facts

Taxpayer Information

This Private Letter Ruling (“PLR”) is requested to determine the Retailer’s [sic] Occupation Tax and Use Tax consequences of actual business practices of the Company. The Company is not currently the subject of litigation or audit regarding the application of this exemption to purchases made in Illinois. To the best of the knowledge of both the Company and Representative, the Department has not previously ruled on this or a similar issue for the taxpayer or any predecessor. The Company, and any of its representatives, have not previously submitted the same or similar issue to the Department of Revenue (the “Department”) and withdrawn before a letter ruling was issued.

Description of Company’s Business Operations

COMPANY is a recycling company that accepts and processes residential and commercial materials and commodities such as paper, glass, plastics, and metals. The Company receives materials from related entities, third party waste haulers, and other customers. It performs a variety of activities to prepare these materials for sale through its advanced processing and sorting systems. Examples of materials processed include post-consumer paper, cardboard, plastic, clear and colored glass, aluminum, steel, and tin. Once processed these materials are sold to businesses such as paper mills, manufacturers, and other industries as a supply stream of high-quality raw materials needed for efficient operations.

Material Facts Relating to PLR Request

The Company is contemplating an expansion of its recycling infrastructure by opening a new single-stream recycling processing facility in Illinois. COMPANY’s processing of raw recycling materials will employ state-of-the-art equipment components such as Motor Control Centers, automated machinery for processing (such as optical sorters, magnets and eddy currents, rotating trommels, advanced screens) and self-regulated conveyors and balers.

Transfer vehicles with trailers entering and exiting the site are weighed on the site’s truck scale. Trucks are then directed to the tipping area to unload the raw material.

1. Raw material on the tipping floor is first fluffed by a **Front-End Loader** machine (the loader bucket picks up the raw material and drops it and mixes the raw material) before feeding it into the **Drum Feeder**. This is a necessary first step so that the material is not compacted and will better separate through the entire remaining production process. The drum feeder has a large rotating drum with cleats that further breaks up clumps of compacted raw material and further fluffs the material into a lower density and transforms it into a metered, steady stream of liberated materials.

2. The Drum Feeder discharges the material onto a pit conveyor, then an incline conveyor which transfers material onto a weigh conveyor fitted with belt scales to continuously weigh the material being processed.
3. The material is then sent across an **OCC (old corrugated cardboard) Screen-** an advanced elevated star screen technology by which OCC is automatically removed from the stream and conveyed to the OCC Conveyor after going through a quality control (QC) station. OCC QC inspectors manually remove any contaminants, which are conveyed to the contaminants conveyors ending at a rejects compactor. Mixed rigid plastics and bulky metals are also separated and removed at this step in the process.
4. The remaining raw material (after passing the OCC screen) is split into two parallel streams and conveyed to the **Glass Breaker Screens**. The Glass Breaker Screens have metal rotating discs designed to break the glass down to a smaller size which, after falling through the screen, is conveyed to the glass processing area which uses light-heavy density material separation to clean the glass of paper shreds and contaminants before glass is stored in a concrete bunker.
5. Raw material apart from the glass is then conveyed to the **WalAir Separators**, which use air blowers and rotating drums to perform a light-heavy density material separation to split the material into three streams. The heavy bulky materials are separated out first and are conveyed to a **drum magnet** to recover and separate ferrous metals and the remainder, is sent down a contaminants conveyor to a Compactor. The second fraction is mostly Containers (plastics, small ferrous, and aluminum) and is sent to the Trommels (see #7 on enclosed schematic)
6. The third materials (predominantly newspaper) from the WalAir Separators are conveyed to two **Optical Sorters** which automatically perform a quality control of the newspaper and eject contaminants by the use of optical scanning and compressed air. The newspaper is conveyed to a long, slow moving staging conveyor before being conveyed to the baler. The ejected contaminants are combined with the Containers stream headed to the Trommels. The Optical Sorters also use air blowers and suction hoods/ductwork to extract the low density plastic film (such as plastic grocery bags) which are discharged onto the Contaminants conveyor headed to the Compactor.
7. The (mostly) Containers stream is then processed through two rotating **Trommels** that perform a sizing separation of three streams (six in all – 2x3).
8. Each of the six streams of material from the Trommels are conveyed to a **Ballistic Separator** that performs three separations: smaller fines material (which is accumulated and then conveyed to the glass processing line), overs fraction 2D material (mostly Mixed Paper which is discharged onto optical sorters that perform an automated Quality Control of the Mixed Paper to eject contaminants) and Cardboard (conveyed to meet with cardboard separated in step #3 above).

Containers (bottles and cans) and contaminant rejects are conveyed to the Backs of the Ballistic Separators and then to the Container Processing area.

9. The material from the Backs of the Ballistic Separators are gathered together and conveyed to the Container processing line. This line begins with a rotating **Drum Magnet** which removes ferrous material that is then conveyed to a storage container.
10. The material that passes by the Drum Magnet is sent to two in-line **Eddy Current Separators** which use eddy current fields to eject non-ferrous metals material (mostly aluminum cans). The second Eddy Current Separator performs a Quality Control of the ejected stream from the first Eddy Current, before the non-ferrous metal is conveyed to a dedicated non-ferrous Baler.
11. After the Eddy Current separation process, the remainders are conveyed to an Optical Sorter designed to remove any residual paper from the material stream. The ejected paper is conveyed to meet with the Mixed Paper stream from above #8.
12. The pass material from the above Optical Sorter is conveyed to the **PET Optical Sorter** which ejects PET (polyethylene terephthalate) plastics material. The PET material is run through a second quality control optical sorter to remove any contaminants before being discharged in a slow-moving staging conveyor and then baled.
13. Pass material from the PET Optical Sorter is conveyed to the **HDPE Optical Sorter** which ejects HDPE (high-density polyethylene) plastics materials. The HDPE material is run through a second quality control optical sorter to remove any contaminants before being discharged in a staging conveyor and then baled.
14. Pass material from the HDPE Optical Sorter is conveyed to the **PP Optical Sorter** which ejects polypropylene plastics material. The PP material is run through a second quality control optical sorter to remove any contaminants before being discharged in a staging conveyor and then baled.
15. Pass material from the PP Optical Sorter is mostly contaminants/ or reject material but before being sent to a Compactor, the material is conveyed to a **Residue Recovery Optical Sorter** designed to eject out any residual recyclables to be discharged and conveyed back to the beginning stages of the system (at #4 above) for another chance of being recovered.
16. The pass material of the Residue Recovery Optical Sorter is residue/rejects material and is conveyed to a diverter hopper feeding one of two compactors.
17. All recyclable material from the reversing staging conveyors are ultimately conveyed onto one of two baler in-feed conveyors, which meters the material into the balers. Balers then compact the materials, creating compressed bales of recycled commodities, which are wrapped with baling wire, ready for sale.

Through systematic processing, the Company takes raw materials which are not usable in their incoming state and manufactures products for which not only is there a market, but which indeed are sold.

Requested Ruling

The Company requests that the Department rule that the described recycling activities are regarded as manufacturing. Further, to the extent that the activities are declared to be manufacturing, the equipment used in that process shall fall within the Retailers' Occupation Tax and Use Tax exemption for machinery and equipment.

Statement of Law

Statutes, Rules, and Rulings:

35 ILCS 120/2-1

35 ILCS 120/2-5

35 ILCS 105/2

86 Ill. Adm. Code 130.330

The Illinois Retailer's Occupation Tax ("ROT") and Use Tax ("UT") impose a tax on persons engaged in the business of making retail sales of tangible personal property (TPP). 35 ILCS 120/2-1; 35 ILCS 105/2. The ROT and UT rules provide however, an exemption for certain property, if it satisfies a two-pronged test:

1. That property is manufacturing or assembly machinery and equipment, and
2. The property is used primarily in the process of manufacturing. 35 ILCS 120/2-5(14); 35 ILCS 105/3-5(18).

For the purposes of the exemption, manufacturing or assembly "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)(2). "Equipment" includes any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembling process. 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).

The exemption requires that the machinery and equipment is used primarily (over 50% of the time) in the manufacturing or assembling of TPP whether it is a finished product or an article for use in the process of manufacturing or assembling a different article of TPP by procedures commonly regarded as manufacturing, processing, fabricating, or refining. 86 Ill. Adm. Code 130.330(d). However, the exemption does not apply to machinery or equipment used primarily in pre-production or post-production activities. 86 Ill. Adm. Code 130.330(d)(4)(C). Further, the manufacturing process is the production of any article of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating or refining that substantially and

significantly changes some existing material or materials into a material with a different form, use or name. 86 Ill. Adm. Code 130.330(b)(2).

Analysis of Grounds for Requested Ruling

We have examined the relevant statutes, regulations, and guidance issued by the Department. Unfortunately, the Department has not issued any letter rulings or guidance on this topic within the last ten years that the taxpayer or state can rely on. However, as stated above, the sale or use of manufacturing and/or assembly machinery and equipment used primarily in manufacturing is exempt from the ROT/UT. 86 Ill. Adm. Code 130.330.

1. The Front-End Loader Machine and Drum Feeder are exempt from ROT/UT.

To qualify for the ROT/UT manufacturing exemption, TPP must satisfy the two-pronged test provided for by statute. The front-end loader and drum feeder clearly satisfy the requirement that it be machinery and equipment provided by the state. The front-end loader is a piece of heavy machinery that picks up raw materials deposited on the tipping floor and “fluffs” the previously compacted materials moving them to the drum feeder. This equipment performs a step integral to the recycling process as this process separates the raw material into the various individually recyclable components that will be sortable by the processes that follow. After this initial step, the front-end loader dumps the separated material into a drum feeder, which is a large rotating drum with cleats, or sharp projecting spikes, that further fluff and break apart any remaining compacted materials into their component parts. After the compacted raw material is broken apart into a steady stream of components, the drum feeder unloads its contents to be conveyed for further processing. As a result, this machinery satisfies the first prong of the exemption.

The front-end loader and drum feeder also satisfy the second prong relating to a primary use in the manufacturing process. These machines are used exclusively in the processes described above, and therefore meet the greater than 50% use requirement. Furthermore, although the processing of compacted materials into component parts does not result in a finished product, it nevertheless is a manufacturing process with results in an article for future use in manufacturing, processing, fabricating, or refining. The resulting product is significantly changed from useless waste material into component parts of individual value and use. With both prongs satisfied, the front-end loader and drum feeder qualify for the ROT/UT manufacturing exemption.

2. The Screens, Sorters, Separators, Trommels, and Magnets are exempt from ROT/UT.

After the initial processing by the front-end loader and drum feeder, the Company uses a series of screens, sorters, and other equipment to isolate and process individual types of recyclable materials into marketable raw materials for sale. These machines also conform to the requirements for the manufacturing exemption and thus are not subject to ROT/UT.

To isolate materials such as cardboard and glass, the Company uses two specially designed mechanical screens. An OCC Screen is a piece of machinery that automatically removes cardboard from the full material stream for compacting and baling. Glass Breaker Screens use large metal rotating disks that break glass and separate the pieces from the remaining materials and the resulting glass shards are stored for later sale.

Additional machinery is used to separate other valuable material from the material stream. WalAir Separators use blowers and drums to separate lightweight materials from heavy or bulkier ones. Drum magnets separate ferrous metals while an Eddy Current Separator uses eddy currents fields to eject aluminum and non-ferrous metals from the flow of materials. Trommels are large rotating pieces of machinery which perform a size separation of the materials passing through the stream which works in conjunction with a ballistic separator that performs three separations: glass, paper and containers (bottles and cans). Finally, the Company uses optical sorters to remove newspaper, as well as polyethylene terephthalate (PET), high-density polyethylene (HDPE), and polypropylene plastics to be bailed.

These machines each satisfy the first prong for the exemption. Each machine contributes to the process of taking a valueless waste material, and separating, sorting, crushing, breaking, and baling recovered valuable resources into marketable goods for sale as input material for industrial clients. Furthermore, the second prong is satisfied as these machines only serve the manufacturing processes described, they have no separate use independently. Finally, the result of both processes is the transformation of waste into material of a different form and use, marketable and useable by a variety of industries as valuable raw material. Thus, the screens, sorters, separators, trommels, and magnets are exempt from ROT/UT under the manufacturing exemption.

3. Conveyors are exempt from ROT/UT.

Conveyors are located throughout the manufacturing process, moving the fluffed material into the drum feeder and feeding them into the pit conveyor, to the incline conveyor which transfers material onto a weigh conveyor, to the OCC conveyor through to the glass breaker screens to the glass bunkers or WalAir separators. From here conveyors move contaminants to a compactor and remainders to Optical sorters, then newspapers to balers and the rest of the work in process materials to Trommels and Ballistic Separators on to, depending on the material, optical sorters, drum magnets, and eddy current separators, and finally to compactors or balers. Conveyors are an integral part of the manufacturing process, moving our client's raw materials/inputs from the first stage of the process to the last stage of manufacturing process (packaging), where materials are compressed and baled, ready for customers to purchase. As such, conveyors qualify for the ROT/UT manufacturing exemption.

4. Balers are exempt for ROT/UT.

The balers are the final part of the processing stage, where the commodities are packaged, as part of the integrated manufacturing process, compressing and wrapping with baling wire the various recycled commodities, ready for sale to customers. As such, balers qualify for the ROT/UT manufacturing exemption.

Authorities Contrary to Requested Ruling

As mentioned previously, the State has not issued any letter rulings or guidance on this topic within the last 10 years that the taxpayer or state can rely on.

Conclusion

The single stream recycling process which will be implemented in Illinois by COMPANY should be considered manufacturing and the equipment, beginning with the front-end loader fluffing materials through the balers performing compacting and wrapping of ready for sale commodities, purchased and used within the process should qualify as exempt manufacturing equipment under 86 Ill. Adm. Code 130.330. Equipment used within the integrated manufacturing line produce [sic] products which are sold to paper, plastic, and bottle manufacturers who further process these items for sale.

We respectfully request a letter ruling on the issues presented in this letter. Thank you for your time and consideration in this matter. If you have any questions, or require additional information, please feel free to contact me.

DEPARTMENT'S RESPONSE:

Machinery and equipment that is used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.330. 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 or assembling a different article 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).

The Department is of the opinion that the recycling process you describe in items 2 through 17 under "Material Facts Relating to PLR Request" qualifies as manufacturing under the provisions of 86 Ill. Adm. Code 130.330 and that the machinery and equipment used in that process qualify for exemption from the Retailers' Occupation Tax and Use Tax. In addition, the drum feeder described in item 1 qualifies as manufacturing machinery under the rule. However, the front-end loader described in item 1 does not qualify as manufacturing machinery under the rule. The Department is of the opinion that, regardless of any fluffing the front-end loader may perform, the primary use of the front-end loader is to convey, handle, or transport materials prior to their entrance into the production cycle in accordance with 86 Ill. Adm. Code 130.330(d)(4).

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.

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

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